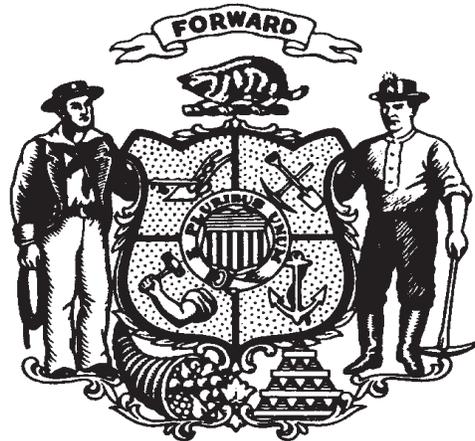


# Wisconsin Administrative Register

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## Emergency rules now in effect

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### Agriculture, Trade and Consumer Protection

Rules adopted revising **ch. ATCP 77**, relating to certification of drug residue screening laboratories and approval of laboratory analysts to perform drug residue screening tests on milk.

#### Finding of emergency

The Department of Agriculture, Trade and Consumer Protection ("department") finds that an emergency exists and that the following emergency rule is necessary to protect the public welfare. This emergency rule will bring Wisconsin into compliance with federal requirements. Wisconsin must comply with the federal requirements in order for Wisconsin dairy plants to continue shipping milk in interstate commerce. Interstate milk shipments are critical for the state's dairy industry, and for the overall economy and well being of the state. The facts constituting the emergency are as follows:

(1) Grade A milk shipments are governed by the Interstate Pasteurized Milk Ordinance (PMO), jointly administered by the United States Food and Drug Administration (FDA) and the National Conference of Interstate Milk Shippers (representing participating states). In order for Wisconsin dairy plants to ship milk in interstate, Wisconsin must comply with the PMO and FDA mandates related to the PMO. Under s. 97.24, Stats., the Wisconsin Legislature has directed the department to adopt rules that conform to the PMO.

(2) Under the PMO and current state rules, all raw milk received by a dairy plant must be tested for certain drug residues (antibiotics from the penicillin family of drugs).

(3) FDA approves tests used for drug residue testing. There are 15 different tests that are approved for use. Some of these tests use a mechanical reader that determines the test result and then records it on a printer tape or directly to a computer. But other approved tests are "visually read", and involve no mechanical reader. In these tests, an individual analyst

interprets a color change to determine whether drug residues are present.

(4) The department currently certifies laboratories and analysts that conduct confirmatory drug residue tests on raw milk samples. The department certifies these laboratories and analysts under ch. ATCP 77, Wis. Adm. Code. The department does not currently certify laboratories or analysts that perform only preliminary screening tests for drug residues, although it does provide training. Some preliminary screening tests use mechanical readers, while others are "visually read."

(5) On July 2, 2001, FDA issued a new directive requiring states to approve laboratories that conduct screening tests (not just confirmatory tests) for drug residues in milk. A state must conduct an on-site evaluation before approving a laboratory or analyst to conduct "visual read" screening tests. According to the FDA, the department must complete its evaluations and issue its approvals by March 1, 2002. FDA may de-certify Wisconsin milk shippers if the department fails to carry out this directive, or if milk shipments are not tested by approved laboratories and analysts. De-certification could prevent the movement of Wisconsin milk in interstate commerce.

(6) In order to ensure the continued movement of Wisconsin milk in interstate commerce, the department must adopt rules expanding the current lab certification program under ch. ATCP 77, Wis. Adm. Code. The rules will require certification of laboratories conducting drug residue screening tests. The rules will also require on-site evaluation and approval of individual analysts conducting "visual read" screening tests. The rules will create new lab certification fees to pay for the expanded program, including the cost to perform the required on-site evaluations. The department must adopt these rules as soon as possible, in order to complete the required evaluations and issue the required approvals by March 1, 2002.

(7) The department cannot create this new program, by normal rulemaking procedures, in time to meet the March 1, 2002 deadline. The department is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of "permanent" rules by normal procedures. This emergency rule is needed to ensure the continued movement of Wisconsin milk in interstate commerce, and to prevent the economic disruption that would occur if that movement were interrupted.

<b>Publication Date:</b>	<b>November 15, 2001</b>
<b>Effective Date:</b>	<b>November 15, 2001</b>
<b>Expiration Date:</b>	<b>April 14, 2002</b>
<b>Hearing Dates:</b>	<b>November 29, December 4, 5 &amp; 6, 2001</b>

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### Commerce (3)

#### (Financial Assistance for Businesses and Communities) (Chs. Comm 105-128)

1. Rules adopted revising **ch. Comm 110** relating to brownfields redevelopment grants.

#### Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under section 3628 of 2001 Wis. Act 16, the Department must begin

accepting applications from trustees and nonprofit organizations, for brownfields redevelopment grants. And, under section 3630 of the Act, the Department must begin disallowing use of the grant funds to pay either delinquent real estate taxes or lien claims of the Department of Natural Resources or the federal Environmental Protection Agency.

The Department's rules for administering the brownfields grant program are currently contained in ch. Comm 110 Wis. Adm. Code. These current rules do not recognize trustees and nonprofit organizations as eligible applicants, and do not include disallowing grant funds for payments on either back taxes, or on state or federal lien claims.

In November, the Department expects to begin promulgating permanent rules for making ch. Comm 110 consistent with Act 16. Due to the mandatory rulemaking procedures under ch. 227, Stats., the permanent rules are not expected to become effective until July 1, 2002. In order to comply with Act 16 by accepting applications and issuing grants for trustees and nonprofit organizations prior to then, emergency rules reflecting these changes are needed, as included herein. These emergency rules also address the above disallowance for grant proceeds, and include some minor updating of the ch. Comm 110 criteria for submitting grant applications and for filing subsequent financial and program reports.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

**Publication Date:** October 27, 2001

**Effective Date:** October 27, 2001

**Expiration Date:** March 26, 2002

**Hearing Date:** January 11, 2002

2. Rules adopted revising **ch. Comm 108**, relating to community development block grant program.

#### **Finding of emergency**

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

The facts constituting the emergency are as follows:

- Under the state's Consolidated Plan for the expenditure of U.S. Department of Housing and Urban Development Funds (HUD), the department has available Community Development Block Grant Funds specifically for community and economic development projects that typically are planned and designed during the winter months for commencement when the ground thaws.

- Having the ability to make these grants available at this time would assist eligible local governmental units with their project planning, obtain bids during a time when bids can be as much as 20 percent less than bids obtained in late winter or early spring, and allow for construction start-up early in the spring.

- Project readiness is a consideration in awarding grants under this program.

- Bid letting and contract approvals made prior to the construction season may allow for the completion of construction projects within one construction season.

- The acceptance and funding of applications at this time will provide an economic stimulus at the local government level in the form of planning, engineering and particularly construction contracts which offer high paying jobs.

This rule revision relates to changes in definitions which occurred in the 1999 Wis. Act 9; additional program funds now available from U.S. Housing and Urban Development

(HUD); revising the application schedule on a continuing basis; and updating the process of scoring applications.

Currently public facility grants to eligible communities are awarded annually. Under this proposal, grants can be awarded throughout the year making it easier for communities to prepare and submit their proposals.

The rule revisions reflect the expansion of funding programs for public facilities planning to issue grants to eligible local governments for public facilities planning up to \$12,500 per plan.

**Publication Date:** December 1, 2001

**Effective Date:** December 1, 2001

**Expiration Date:** April 30, 2002

**Hearing Date:** January 16, 2002

3. Rules adopted creating **ch. Comm 107**, relating to Wisconsin technology zone program.

#### **Finding of emergency**

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Facts constituting the emergency are as follows:

- In accordance with s. 560.02 (4), Stats., the department of Commerce has the responsibility to promulgate rules to provide for the attraction, promotion and expansion of high-technology business in the state.

- Section 560.96, Stats., makes available certain tax benefits for certified businesses within the 8 designated technology zones. Tax benefits are available to certified businesses if their tax year begins on or after January 1, 2002.

- In response to a downturn in the economy and recent economic forecasts, Governor McCallum has prioritized the need to promulgate these rules as part of his economic stimulus package.

- The technology zone program will address several action items identified by the 2000 Wisconsin Economic Summit to ensure Wisconsin's short- and long-term economic vitality and success, including:

1. Combating the state's 'brain drain' by increasing high tech jobs.

2. Linking Wisconsin's research expertise with Wisconsin firms to grow clusters of high-tech jobs.

3. Linking economic strategies across regions for power through collaboration.

- This emergency rule is being created in order that the process of designating the 8 technology zones be commenced as soon as possible and that such eligible businesses may become certified and participate in the tax benefits through the Wisconsin Technology Zone Program.

**Publication Date:** December 5, 2001

**Effective Date:** December 5, 2001

**Expiration Date:** May 4, 2002

**Hearing Date:** January 11, 2002

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### **Financial Institutions – Banking**

A rule was adopted creating **s. DFI-Bkg 80.90**, relating to registration fees under the Wisconsin Consumer Act.

#### **Finding of emergency**

2001 Wis. Act 16 authorizes the Department of Financial Institutions to adopt rules pertaining to registration fees under the Wisconsin Consumer Act. The proposed rule revises the

formula for calculating these fees. Without this rule, the department is unable to effectuate the legislature's requirement that registrations be completed by February 28, 2002.

**Publication Date:** December 3, 2001  
**Effective Date:** December 3, 2001  
**Expiration Date:** May 2, 2002  
**Hearing Date:** January 28, 2002

## Financial Institutions – Corporate and Consumer Services

Rules adopted repealing **ch. SS 3** and repealing and recreating **chs. DFI–CCS 1 to 6**, created as emergency rules, relating to the Uniform Commercial Code.

### Finding of emergency

2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code (“UCC”), effective July 1, 2001. The act authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to operate either a state-wide lien filing system or give effect to the provisions of the UCC before permanent rules can be promulgated. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with nation-wide uniformity in lien filings. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, and other notices of liens under the UCC.

**Publication Date:** October 24, 2001  
**Effective Date:** October 24, 2001  
**Expiration Date:** March 23, 2002  
**Hearing Date:** December 3, 2001

## Health & Family Services (Community Services, Chs. HFS 30—)

Rules adopted revising **ch. HFS 90**, relating to early intervention services for children birth to 3 with developmental needs.

### Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the health and welfare of children receiving early intervention services under the Wisconsin “Birth to 3 Program.” The facts constituting the emergency are as follows:

Counties must, under s. 51.44 (3) and (4), Stats., and s. HFS 90.06 (2), provide or contract for the provision of early intervention services for children with developmental needs in the age group from birth to 3. Qualifying children in each county are entitled to receive needed services. While counties may assess parents of children receiving early intervention services a share of those service costs, counties ultimately are responsible for the costs of providing such services. Since counties’ cost exposure for Birth to 3 program costs is unlimited, unanticipated increases in a county’s costs may result in a county suspending program services due to a lack

of funding. Even though such cessations are illegal, one county indeed suspended the provision of needed services within the past year. By the time the Department was able to reinstate services in the county, enrolled children were deprived of needed services for several months. Given the negative effect such service cessations could have on children with disabilities, the Department needs to immediately alleviate the cost burden on counties by increasing the share of service costs parents must bear. In doing so, the Department will preserve the continuity of early intervention services.

The Department is also proceeding with the promulgation of the body of rules contained in this order as proposed permanent rules that will remain in effect when this emergency order expires. The full basis for the changes made by these orders is explained below:

Section HFS 90.06 (2) (h) specifies that county administrative agencies must determine the amount of parental liability for the costs of the early intervention services in accordance with ch. HFS 1. Chapter HFS 1 contains the Department’s cost liability determination and ability to pay standards and guidelines for services purchased or provided by the Department and counties. Section HFS 90.06 (2) (h) also states that parents may satisfy any liability not met by third party payers if parents pay the amount determined in accordance with the family support payment formula in s. HFS 65.05 (7).

The Department’s ability to pay system currently ties the Birth to 3 program to s. HFS 65.05 (7) and ch. HFS 1. Chapter HFS 90’s use of these other Department administrative rules has had several undesirable consequences. First, the methodology in s. HFS 65.05 (7), while appropriate for families with children having severe disabilities, is inappropriate for the Birth to 3 program because of the variability in applying the methodology and the significantly greater turnover of families in the Birth to 3 program. This turnover of families makes the chapter’s complex calculations relatively onerous on counties to administer.

Sections HFS 90.06 (2) (h) and 90.11 (2) (a) 2. and 4. cross reference and incorporate ch. HFS 1. Section HFS 1.01 (4) (d) allows counties to request an exemption from applying the ability to pay system because the county can document that the imposition of a ch. HFS 1 family cost sharing charge is administratively unfeasible. Twenty-four counties have demonstrated to the Department that their cost of administering the ability to pay system amounts to more than the revenues the counties collect. The relatively high cost of administering the program under the current provisions of ch. HFS 90 combined with relatively low rates of cost-sharing by families permitted by counties’ application of s. HFS 65.05 (7), has made the program burdensome on some counties.

Second, federal policies governing Birth to 3 programs require participating states to administer a statewide early intervention system and do not allow a county to bill a family’s insurance without the family’s consent. Chapter HFS 1, however, requires that a family’s insurance benefits be billed; a contradiction of federal law. Third, the current ability of counties to request and obtain exemption from participating in the ability to pay system also is contrary to federal policies requiring states to operate a uniform statewide early intervention system. While federal regulations are currently being revised, none of the regulations circulated by the U.S. Department of Education would have any bearing on the Department of Health and Family Service’s promulgation of these administrative rules.

The Department’s modifications to ch. HFS 90 have two results. First, since ch. HFS 90 no longer cross-references ch. HFS 1, counties could no longer request exemption from

participating in Wisconsin's Birth to 3 program cost share. County participation in administering the Birth to 3 program cost share becomes mandatory. Second, the method of determining parents' share of the costs of needed services is simplified and standardized statewide and is based on the relationship of families' incomes to the federal poverty threshold.

The rules simplify the determination of parental cost share, thereby eliminating the current ability to pay system's inequities for families statewide and reducing counties' administrative costs associated with the program. The Department's use of the federal poverty threshold, as revised annually, is a benchmark against which families' adjusted incomes are compared to determine the parental cost share liabilities. Under this system, the Department projects that the number of families required to share in the early intervention service costs will roughly double. Since each family's cost share will be based on approximately 1% of their income (as adjusted by a standard deduction for each child with a disability in the family) rather than the previous basis of 3% of income minus a standard deduction and disability-related expenses, the cost share of some families may increase. Families with incomes above 200% of the federal poverty level will be billed for part of the early intervention services their children receive. Families with adjusted incomes below 200% of the federal poverty threshold will be exempt from cost sharing. The Department projects that about 2,000 families will be exempt from cost sharing under the proposed formula and about 3,100 families will have a liability for a cost share.

Under the simplified payment system the Department is setting forth, the Department expects counties' costs to administer the payment system to decline as the number of forms and required calculations should be significantly reduced. The Department projects that the rule changes will increase the revenues generated by counties, in total, due to the fact that more families will have a parental cost share and more counties will be participating in the parental cost share system. However, individual counties having relatively lower per capita incomes may not experience significant revenue increases.

**Publication Date:** September 26, 2001  
**Effective Date:** October 1, 2001  
**Expiration Date:** February 28, 2002  
**Hearing Dates:** October 16 and 17, 2001

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## Health & Family Services

(Health, Chs. HFS 110—)

Rules adopted creating s. HFS 119.07 (6m), relating to prescription drug coinsurance coverage.

### Exemption from finding of emergency

These are emergency rules creating HFS 119.07 (6m), Wis. Admin. Code to establish for prescription drug coverage a drug benefit separate from the medical benefits for the Health Insurance Risk-Sharing Plan (HIRSP) as authorized by s. 149.14 (5) (e), Stats., as amended by 2001 Wisconsin Act 16, and s. 149.146 (2) (am) 5., Stats., as created by 2001 Wisconsin Act 16. Section 9123 (9w) of the Act authorizes the department to use the emergency rulemaking procedures under s. 227.24, Stats., to promulgate these rules, exempts the department from making a finding of emergency, and from providing evidence that promulgating these rules as an

emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

The HIRSP Board of Governors on September 13, 2001, approved the coinsurance rate and out-of-pocket limits established in these rules, as required by s. 149.14 (5) (e) Stats., as amended by 2001 Wisconsin Act 16 and s. 149.146 (2) (am) 5, Stats., as created by 2001 Wisconsin Act 16.

### Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP health insurance coverage includes prescription drug coverage. Currently, two major issues affect HIRSP prescription drug coverage. The first issue is that pharmacies have difficulty determining the financial liability of HIRSP policyholders. The second issue is that the current system of HIRSP reimbursement to policyholders for prescription drug costs is financially burdensome to HIRSP policyholders. To resolve these issues, the department proposes to implement effective January 1, 2002, new coinsurance provisions for HIRSP's drug benefit that will clarify the financial liability of HIRSP policyholders for covered prescription drug costs and eliminate the process of reimbursing policyholders for prescription drug expenses by establishing policyholders' minimum and maximum out-of-pocket costs for covered prescription drugs.

The proposed rules will affect approximately 12,000 HIRSP policyholders statewide.

**Publication Date:** December 20, 2001  
**Effective Date:** January 1, 2002  
**Expiration Date:** May 31, 2002  
**Hearing Date:** January 29, 2002

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## Natural Resources (2)

(Fish, Game, etc., Chs. NR 1—)

1. Rules adopted amending s. NR 20.20 (73) (j) 1. and 2., relating to sport fishing for yellow perch in Green Bay and its tributaries and s. NR 25.06 (2) (b) 1., relating to commercial fishing for yellow perch in Green Bay.

### Finding of emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Yellow perch contribute significantly to the welfare of Wisconsin citizens by supporting popular and economically valuable sport and commercial fisheries. The yellow perch population in Green Bay is rapidly declining. This decline reflects a number of years of very poor reproduction. The only recent year with reasonably good natural reproduction was 1998. The fish spawned that year contributed to the sport harvest in 2001 and will become vulnerable to commercial gear this summer. Sport and commercial harvests of adult yellow perch must be limited immediately in order to protect those fish and maximize the probability of good reproduction in the near future.

**Publication Date:** June 30, 2001  
**Effective Date:** July 1, 2001  
**Expiration Date:** November 28, 2001  
**Hearing Date:** August 13, 2001  
**Extension Through:** January 26, 2002

2. Rules adopted revising **ch. NR 20**, relating to sturgeon spearing on the Lake Winnebago system.

#### **Finding of emergency**

The department of natural resources finds that an emergency exists and the foregoing rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

Winter spear harvest of sturgeon has continued to exceed the total allowable harvest goals due to an increase in spearing pressure and the current format of the season, which allows continued spearing for 1 day following the announcement of the season closure (when 80% of the total allowable harvest is reached). Harvest on the final day of the 2001 season resulted in a final harvest that exceeded the total allowable harvest by 52%. An emergency order is needed to protect the sturgeon population by preventing continued overharvest of female sturgeon during the 2002 season while permanent rules are being developed. The early closure should reduce spearing effort by 40%, which should decrease the daily harvest and reduce the risk of exceeding the total allowable harvest on the final day of the season.

**Publication Date:** December 14, 2001  
**Effective Date:** December 14, 2001  
**Expiration Date:** May 13, 2002  
**Hearing Date:** January 14, 2002

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### **Pharmacy Examining Board**

Rules adopted revising **chs. Phar 1 and 2**, relating to a pharmacy internship program.

#### **Finding of emergency**

2001 Wis. Act 16 creates and amends rules relating to a pharmacy internship program.

Section 3608L of Wis. Act 16, Wis. Stats. s. 450.045, which had previously authorized a Pharmacy Internship Board to implement and oversee the practice of pharmacy in this state by pharmacy interns prior to receiving licensure from the Pharmacy Examining Board.

Section 2154 of Wis. Act 16 mandates that effective December 31, 2001, the repeal of Wis. Stats. s. 450.045 becomes effective. As of December 31, 2001, there will currently be pharmacy interns still serving internships in this state and additional pharmacy students beginning January 1, 2001, who will seek to begin an internship program. However, no standards or oversight will be in place by administrative rule of the Pharmacy Examining Board which is now charged with authority for the pharmacy internship process.

The administrative rule-making process will not allow rules to be in place as of January 1, 2002, without the use of the emergency rule procedure. The emergency rule is needed therefore to effect a transfer of oversight from the extinguished Pharmacy Internship Board to the Pharmacy Examining Board as of January 1, 2001.

**Publication Date:** December 30, 2001  
**Effective Date:** January 1, 2002  
**Expiration Date:** May 31, 2002  
**Hearing Date:** February 12, 2002

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### **Transportation**

Rules adopted amending **s. Trans 102.15**, relating to the issuance of driver's licenses and identification cards.

#### **Finding of emergency**

This rule is adopted in response to the September 11, 2001, terrorist hijackings in the United States, and are intended to help uncover any possible terrorist attempting to obtain identification documents through the Wisconsin Department of Transportation. On November 21, 2001, the New York Times reported that to support their terrorism, terrorists finance applications for political asylum and thus implant terrorist cells in Western Europe. This rule change could interrupt terrorists who have applied for or received asylum in the United States and who attempt to obtain Wisconsin identification documents.

Because of the urgency of current government efforts directed at taking steps to interrupt terrorist workings, this order adopting an emergency rule shall take effect as provided below.

**Publication Date:** December 21, 2001  
**Effective Date:** December 21, 2001  
**Expiration Date:** May 20, 2002  
**Hearing Date:** February 15, 2002

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### **Treasurer**

Rules adopted creating **ch. Treas 1** relating to the Wisconsin College Savings Program Board.

#### **Finding of emergency**

Section 15 (1), 2001 Wis. Act 7 provides an exemption from a finding of emergency for the adoption of ch. Treas 1.

#### **Analysis prepared by the Office of the State Treasurer**

Statutory authority: Section 14.64 (2) (e), Stats., and section 15, 2001 Wis. Act 7.

Statutes interpreted: s. 14.64 *et seq.*, Stats.

The Wisconsin College Savings Program Board establishes a rule for the operation of the College Savings Program. The rule is designed to grant flexibility to program participants wherever possible, while enabling the State and its private-sector partners to administer the program in a manner that protects the program's financial integrity and viability. Maintaining eligibility as a "qualified tuition program" pursuant to section 529 of the Internal Revenue Code [26 USC 529] is another primary objective. "529" programs are eligible for a number of federal tax benefits that are attractive to families saving for future college costs. Significant features of the rule are addressed below:

Sections Treas 1.03, 1.04 and 1.05 describe who may open an account and how to open an account. Section Treas 1.06 discusses designating a successor owner and describes how to change ownership of an account. Sections Treas 1.07 and 1.08 define the account beneficiary and how to change the beneficiary on an account.

Section Treas 1.09 details how to make contributions to an account, including minimum and maximum contribution limits, and how to "rollover" an account balance to another section 529 program. IRS requirements relating to investment direction are also detailed.

Sections Treas 1.11, 1.12 and 1.13 describe account withdrawals, distributions and refunds. Special circumstances

are also provided for in these sections, such as the death or disability of the beneficiary or receipt of a scholarship by a beneficiary. Section Treas 1.14 sets forth conditions under which the Board may terminate an owner's account. Sections Treas 1.15 and 1.16 address related fees and penalties.

**Publication Date:** January 7, 2002  
**Effective Date:** January 7, 2002  
**Expiration Date:** June 6, 2002

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### Volunteer Fire Fighter and Emergency Medical Technician Service Award Board

Rules adopted creating **ch. VFF-EMT 1**, relating to the length of service award program.

#### Exemption from finding of emergency

Section 10 (3) (a), 1999 Wis. Act 105.

#### Analysis prepared by the Department of Administration:

Statutory authority: ss. 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats.

Statutes interpreted: s. 16.25 *et seq.*, Stats.

Pursuant to section 16.25 (2) through (5), Stats., the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board ("Board") is required to establish by rule a program ("Length of Service Awards Program" or "Program") to provide length of service awards, as described in 26 USC 457 (e) (11), to volunteer firefighters ("VFF") and municipalities that operate volunteer fire departments or contract with volunteer fire companies, and to volunteer emergency medical technicians ("EMT"). To the extent permitted by federal law, the Program is to be designed to treat length of service awards as a tax-deferred benefit under the Internal Revenue Code. The rules are to include design features for the Program, the requirements for and the qualifications of private sector entities that are eligible to provide administrative services and investment plans under the Program, and an appeal. Significant features of the rule are addressed below:

Section VFF-EMT 1.04 describes eligibility requirements for municipalities wishing to participate in the program, such as adopting a resolution or ordinance authorizing participation, developing standards for determining the service required of the individuals it sponsors in order to qualify for municipal contributions and providing for circumstances where municipalities wish to jointly operate, or contract with, the same volunteer fire department or volunteer fire company.

Section VFF-EMT 1.05 sets forth requirements and procedures for municipal contributions made on behalf of eligible volunteers, and for the state's matching contribution (up to \$250 per eligible individual annually).

Section VFF-EMT 1.06 sets forth the parameters for municipal contributions for prior service rendered before the municipality began participating in the Program. The minimum contribution for prior service is set at \$100, and those contributions may spread over a number of years. A separate accounting is required for these prior service payments.

Section VFF-EMT 1.07 sets forth the Program's vesting requirements and the various permutations possible between

full and partial vesting periods and the minimum age requirement (age 60) for payout. Section VFF-EMT 1.07 (1) establishes that 20 years service is required to fully vest and, upon reaching age 60, the award must be paid. (This requirement insures that the benefit maintains its tax deferred status.) Section VFF-EMT 1.07 (2) provides that a fully vested individual age 60 or older may continue to provide service toward a new length of service award under a new account but, for IRS rule purposes, contributions must be paid immediately and cannot accumulate. Section VFF-EMT 1.07 (3) provides for partial vesting after 10 years' service. Should the individual perform more than 10 but less than 20 years' service, upon reaching age 60, he or she will receive only 50% of the net asset value of the benefit account for the first 10 years of service rendered, and an additional 5% for each year thereafter, up to 19 years. Section VFF-EMT 1.07 (7) allows an individual to provide simultaneous service to two or more separate municipalities but, in such cases, only one year of service credit may be earned.

Section VFF-EMT 1.09 details the notice and procedure for when a VFF-EMT ceases performing service for one participating municipality and begins performing service for another municipality, which utilizes a different program administrator or vendor. Such a transfer is allowed, but the account will be frozen and a new one started with the new program administrator. However, any accumulated years of credited service will continue to count toward the vesting requirements. Section VFF-EMT 1.10 allows for benefits to be received both upon disability, or to the beneficiaries upon death of the VFF-EMT.

Section VFF-EMT 1.12 sets forth minimum program administrator qualifications. These include five years of experience providing a length of service award program, adequate marketing and enrollment services capabilities, various accounting and record keeping procedures and abilities, membership in good standing in various organizations customary in the program administrator's or investment manager's industry that provides protection against loss, and overall financial strength.

Section VFF-EMT 1.13 provides for the administration of plans offered by a program administrator under a contract with the Board, and standard provisions to be included. These include compliance with all pertinent state and federal statutes, rules and regulations, mandatory full disclosure to the Board of all fees and commissions earned directly and indirectly on the operations of the program, audits, and data processing system failure and administrative service interruption contingency plans. Also important are the required annual statements to participating municipalities and the individuals they sponsor, detailing all contributions made and the fees commissions, and charges paid that affect the individual's account.

Section VFF-EMT 1.17 provides for a two-step appeals process in which a VFF-EMT may first protest service credit issues to the participating municipality, which may consult with the program administrator. Any decision of the municipality may be reviewed at the Board's discretion. An individual who has a substantial interest affected by a Board decision may appeal directly in writing to the Board. All Board decisions are final.

**Publication Date:** September 21, 2001  
**Effective Date:** September 21, 2001  
**Expiration Date:** February 18, 2002  
**Hearing Date:** December 27, 2001

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**Workforce Development**  
**(Prevailing Wage Rates, Chs. DWD 290–294)**

Rules adopted revising **ch. DWD 290** and creating **ch. DWD 293**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

**Finding of emergency**

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Department of Workforce Development is acting under its statutory authority to adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the statutes were effective or the last adjustment.

If these new thresholds are not put into effect by emergency

rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

**Publication Date:     December 27, 2001**  
**Effective Date:        January 1, 2002**  
**Expiration Date:       May 31, 2002**

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## Scope statements

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### Financial Institutions–Securities

#### Subject

Rules relating to banks selling certificates of deposit of third-party financial institutions.

*Objective of the rule.* The Division currently has administrative rules in s. DFI–Sec 4.10 (1) to (4) entitled “Bank Agency Transactions.” That series of rules sets forth the requirements to be met for a bank, savings institution or trust company (“bank”) to not have to be licensed as a broker–dealer in Wisconsin in order to execute transactions involving various types of securities as an agent for public investor–purchasers or sellers of the securities.

Currently, when a bank sells its own certificates of deposit (“CDs”) to purchasers, such does not trigger the Wisconsin securities broker–dealer licensing requirements. However, when a bank sells CDs of third-party financial institutions, such sales activities do not come within current Wisconsin statutory definitional exclusions or current administrative rules establishing exclusions from broker–dealer licensure for banks involved in effectuating securities transactions as agent for investors. As a result, Wisconsin banks cannot engage in this activity, and Wisconsin investors cannot purchase at their “home” bank the CDs of other financial institutions, unless and until an administrative rule with appropriate and necessary investor protections is in place to enable such. The proposed rules would create a new rule subsection under existing Bank Agency Transactions rule s. DFI–Sec 4.10 to separately deal with the situation where the type of security involved in the transaction effectuated by the bank is a certificate of deposit issued by a third-party financial institution.

Because the securities involved in such transactions under the proposed rules would be federally–insured certificates of deposit in amounts not exceeding the \$100,000 per investor FDIC insurance level (such that there is no risk of loss of principal to an investor), the entirety of the existing rules under s. DFI–Sec 4.10 (1) to (4) would not be made applicable. Rather, in addition to those parts of rules s. DFI–Sec 4.10 (1) to (4) that would be utilized, inasmuch as the securities involved are certificates of deposit, the proposed rules would include several of the specific requirements currently contained in the existing administrative rule s. DFI–Sec 4.11 relating to sales to the public by securities broker–dealers of so-called “brokered certificates of deposit.”

#### Policy analysis

Existing and new policies contained in the proposed rules include:

(1) Supervisory requirements to be met by the bank regarding persons involved in executing the CD transactions, which requirements correspond to existing requirements in rule s. DFI–Sec 4.10 (1) (b) 2.

(2) Record–keeping requirements to be met by the bank relating to the CD transactions that correspond to existing requirements in s. DFI–Sec 4.10 (2).

(3) Disclosure requirements to be met—applicable to general advertising materials as well as materials used individually with investors—that are derived from current “brokered certificates of deposit” rule subsections in s. DFI–Sec 4.11 (1).

(4) The certificates of deposit involved in transactions under the rule may not exceed \$100,000 per investor such that, due to the existence of FDIC deposit insurance up to that level, there is no risk of loss of principal to investors.

#### Statutory authority

Sections 551.02 (3) (c), 551.31 (5), and 551.63 (2), Wis. Stats.

#### Staff time required

Estimated time to be spent by state employees to develop the rule—20 hours. No other resources are necessary.

### Health and Family Services

#### Subject

The Department proposes to modify ch. HFS 45, relating to the licensing of family day care centers and ch. HFS 46, relating to the licensing of group day care centers. Chapter HFS 45 applies to centers caring for between 4 and 8 children, while ch. HFS 46 applies to centers caring for 9 or more children. These modifications would: 1. Incorporate new statutory requirements under s. 48.67, Stats., for training of child care providers in the most recent medically accepted method of reducing the risk of Sudden Infant Death Syndrome.

2. Bring both chapters of rules into conformance with other legislation relating to Caregiver Background Checks and the Clean Indoor Air Act.

3. Revise the rules to reflect current generally accepted safety practice in child care.

4. Modify portions of ch. HFS 45 to make those provisions consistent with ch. HFS 46.

#### Policy analysis

With minor exceptions, the Department has not revised ch. HFS 45, relating to licensing rules for family day care centers, since 1989. Since that time, several events have suggested or required the modification of ch. HFS 45. First, in 1997, the Department created ch. HFS 46, relating to licensing of group day care centers. Not surprisingly, these two chapters of rules address similar topics and, in the Department’s judgement, should contain comparable requirements, including ones related to definitions, licensing procedures and penalties and sanctions. Second, since 1989, changes in the child safety practices standards have become generally accepted. For example, cardiopulmonary resuscitation training for childcare providers has become standardized. Finally, 2001 Wisconsin Act 16 amended s. 48.67, Stats., to require that all child care centers licensed to care for children under 1 year of age must receive training in the most recent medically accepted practice to reduce the risk of Sudden Infant Death Syndrome.

Similarly, ch. HFS 46 needs to be revised to reflect recent generally accepted child care practices standards in addition to 2001 Wis. Act 16.

In developing these rules, the Department will consult with the Department of Workforce Development’s Office of Child Care, the agency responsible for developing rules for certified child care homes.

#### Statutory authority

Section 48.67 Wis. Stats.

**Staff time required**

About 120 hours of staff time to research, write and review the proposed changes to the licensing rules.

**Health and Family Services****Subject**

The repeal and recreation of ch. HFS 57 relating to Group Foster Homes for Children.

**Policy analysis**

In Wisconsin, 121 group foster homes provide residence, care and services to children, adolescents and some young adults to age 19, if full-time in school and completing their high school education. The children, youth and young adults residing in group foster homes are under juvenile court jurisdiction and have one or more of the following conditions: emotional or behavioral disorders; drug, alcohol or other substance abuse problems; difficulty acquiring life skills; or a developmental disability.

Placements into group foster homes occur from youth correctional facilities and institutions, county human service or social service agencies and via the interstate compact for placement of children under s. 48.988 and s. 48.989, Stats.; or are made by courts or parents.

The Department is responsible under ss. 48.625, 48.66 and 48.67, Stats., for the licensure and supervision of group foster homes for children on the basis of requirements for issuance of a license and standards for operation of a group foster home. These requirements are set forth in ch. HFS 57, Wis. Adm. Code. HFS 57 has not undergone any significant revision since its original promulgation in 1976. The proposed rules seek to update ch. HFS 57 to bring it into compliance with current drafting standards, statutes and other rules and will add new provisions which support the intent of s. 48.67, Stats., to protect the health, safety and welfare of children.

While the current group foster home rule addresses areas related to personnel, care of children, physical plant and environment, the service needs of children and youth have changed considerably since the original promulgation of the group foster home standards in 1976. The complex treatment-related needs and level of services required by children and youth currently being placed in group foster homes necessitates a revision of licensing standards.

The new rule proposal will include requirements related to:

- Minimum staffing levels and staff qualifications;
- The roles and responsibilities of sponsoring agencies;
- Caregiver background checks in accordance with s. 48.685, Stats.;
- Child abuse and neglect reporting responsibilities in accordance with s. 48.981 (2), Stats.;
- Admission criteria, individual service plan components and documentation and review standards;
- Behavior management policies that specify appropriate and specific methods of behavior management, including the use of appropriate crisis intervention techniques;
- Physical plant, safety and health of children and youth in care;
- The provision of healthcheck services not provided by a private insurer and obtaining written consents for medical and emergency medical care;
- Policies and procedures for discharge of residents that provide for preparation, aftercare and recommendations for post-discharge services;
- Special provisions for group foster homes providing respite care services;

- Special provisions for group foster homes licensed to care for custodial parents and expectant mothers (“Second Chance Homes”);

- Special provisions for group foster homes licensed to care for children under the age of six years;

- Reporting serious incidents (including but limited to: death, serious illness or injury to a child; reportable abuse or neglect; serious incidents requiring law enforcement services; suicide attempts; outbreaks of communicable disease; significant physical plant damage) to the Department;

- Patient rights under s. 51.61, Stats., and ch. HFS 94, Wis. Adm. Code; which allow specific children’s rights, protections and grievance procedures;

- Provisions allowing for inspections, complaint investigations and enforcement actions by the Department.

**Statutory authority**

The Wisconsin Department of Health and Family Services is given authority to revise these rules in ss. 48.67 and in 227.11 (2) (a), Stats.

**Staff time required**

The Department anticipates taking about 18 months to develop and promulgate the ch. HFS 57 rules. The Department estimates that approximately 2,500 hours of Department staff time will be necessary. Principal staffing will be provided by the Department’s Division of Children and Family Services’ (DCFS) Bureau of Regulation and Licensing (BRL) including the Bureau Director, the Child Welfare Program Specialist, the licensing supervisors and the licensing staff, with input from representatives from the Department’s Office of Legal Counsel and other divisions.

The Department will form an advisory group with representation from the Department, group foster care providers and professional organizations. In addition, as the Department develops sections of the rules, the sections will be shared with representative groups of providers for review and comment and with regional and statewide forums and groups representing numerous stakeholders. These opportunities for public input would proceed and would be in addition to ch. 227 Stats., formal public hearings.

**Health and Family Services****Subject**

The Department proposes to repeal and recreate ch. HFS 124, relating to standards for the construction, maintenance and operation of hospitals. The revisions will update the chapter to recognize changes in hospital service delivery and technology, reflect current federal requirements and reflect recent changes to ch. 50, Stats.

**Policy analysis**

Existing Department policies in ch. HFS 124 need to be updated in a variety of areas to reflect current standards of hospital care and practice, federal regulations, recent changes to ch. 50, Stats., ch. HFS 12, relating to caregiver background checks, forthcoming revisions to chs. DOC 50, 51 and 52, and previously issued memos and waivers from the Department’s Bureau of Quality Assurance. Through this rulemaking initiative, the Department anticipates proposing a wide variety of changes, including the following:

1. Updating definitions to reflect current use of terminology.

2. Clarifying the department’s approval process and enforcement authority.

3. Updating requirements regarding discharge planning, patient rights, use of volunteers, post mortem examinations, tagging of bodies, cancer reporting, tuberculosis testing and control, medical records, pharmaceutical and clinical services, fire protection and critical access hospitals.

4. Requiring hospitals to develop and implement a Patient Safety Program.

5. Updating the construction plan review fee table to reflect current practice.

**Statutory authority**

Statutory authority to promulgate these rules is derived from s. 50.36 (1) and (2) (b), Stats.

**Staff time required**

The Department estimates that it will take approximately 2 years and 1,280 hours of staff time to complete a draft of the rule. The extended timeframe will permit Bureau of Quality Assurance staff to develop and work with an advisory body of key external interested parties to discuss the existing ch. HFS 124 and assist with formulating the proposed new chapter of rules.

## Insurance

**Subject**

Regarding s. Ins 3.39 (34), Wis. Adm. Code, relating to Medicare Supplement Insurance Requirements.

**Policy analysis**

*Objective of the rule.* To implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act which was amended to comply with the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act (BIPA). The amendments clarify guarantee issue rights. In addition, the Office will be reviewing pertinent sections of Ins. 3.39 and potentially modifying s. Ins. 3.39, Wis. Adm. Code, as they relate to time periods for underwriting and alternative benefits within products.

The majority of s. Ins 3.39, Wis. Adm. Code has been drafted in compliance with the NAIC Model Acts. As the federal requirements frequently change, so too must the Model Act and s. Ins 3.39. The amendment contained within the Model Act will bring Wisconsin in compliance with current federal regulation. There are no alternatives than to comply with the federal regulation.

**Statutory authority**

Sections 628.34 (12), 628.38, 631.20, 632.76, 632.81, Stats.

**Staff time required**

A small working committee of existing staff will be needed for the modifications. The modifications will take an estimated 200 hours for rule development.

## Natural Resources

**Subject**

Creation of ch. NR 169 regarding a dry cleaner environmental response fund program.

**Policy analysis**

2001 Wis. Act 16 included significant statutory language changes that will affect the implementation of the Dry Cleaner Environmental Response Fund Program. This is a funding program for responding to, investigating and remediating contamination caused by the discharge of dry cleaning chemicals. Chapter NR 169, the rule for implementing this program, has been in place since February, 2000. Those rules were developed with a Dry Cleaning Rulemaking Advisory Group, comprised of several members of the Governor's Council, as well as other interested parties.

These rule revisions will focus on the statutory changes, prioritization of sites, as well as improvements to the contracting portion of the program. Where possible, streamlining and simplification will be incorporated into the rule.

**Statutory authority**

Section 292.65, Stats.

**Staff time required**

The Department will need approximately 500 hours.

## Natural Resources

**Subject**

Revision of ch. NR 150, Environmental Analysis and Review Procedures for Department Actions.

**Policy analysis**

Chapter NR 150, the Department's rule guiding implementation of the Wisconsin Environmental Policy Act (WEPA) was last comprehensively updated in 1987. Significant changes have taken place since then with respect to the Department's statutory authorities and the extent to which the Department has incorporated the elements of the environmental analysis (WEPA) process into its various resource planning, management and permit review procedures. In addition, the Department has many more years of experience to help shape its understanding of the potential environmental effects and level of public interest attendant to its resource management and regulatory activities. These changes necessitate revisions to ch. NR 150. A primary goal of the revision process will be to further streamline the Department's procedures to eliminating duplicative and unproductive work and increasing the Department's focus on cumulative and ecosystem level environmental effects.

**Statutory authority**

Section 1.11, Stats.

**Staff time required**

The Department will need approximately 250 hours.

## Natural Resources

**Subject**

Ch. NR 173 regarding establishment of the brownfields green space grant program.

**Policy analysis**

This rule describes the requirements for a new brownfields green space grant program. The 2001–2003 biennial budget authorized the Department to award \$1 million in grants that will be given to local governments to remediate sites that will have a long-term public benefit, including the preservation of green space, the development of recreational areas or the use of a property by the local government. This rule will include details about the eligibility requirements, scoring criteria, application procedures, and other administrative requirements necessary to administer this grant program.

**Statutory authority**

Section 292.79, Stats.

**Staff time required**

The Department will need approximately 750 hours.

## Public Instruction

**Subject**

Milwaukee Parental Choice Program (MPCP).

**Policy analysis**

- Modify the current rule to reflect 2001 Act 16 changes to s. 119.23, Stats., relating to the Milwaukee Parental Choice Program.
- Modify the current rule to better ensure that participating schools are safe and make it easier for parents to participate in the program.

- Make technical modifications to the current rule.

2001 Wis. Act 16 modified provisions under s. 119.23, Stats., relating to the Milwaukee Parental Choice Program (MPCP). To reflect the statutory changes, Chapter PI 35, would be modified to:

- Change the date a private school must annually submit notice of its intent to participate in the program from May 1 to February 1.

- Reduce payments from MPCP summer school by 40%.

Other changes would be made to better ensure that participating schools are safe and make it easier for parents to participate in the program, including

- Creating optional open application periods for participating private schools starting in the 2002–03 school year.

- Changing the dates student applications are due at the department.

In addition, the following technical modifications would be made to Chapter PI 35:

- Define in rule, rather than by cross-reference to statute, “pupils enrolled” and “membership.”

- Eliminate conflicting language related to the attendance standard that schools can meet to continue participation in the program in the following school year.

- Clarify the language related to counting students for purpose of payment under the program and the requirement to return checks received by the school students not present on the count dates.

- Modify references to the name of the program in the rule to make it consistent with the statutory name of the program.

- The proposed rule would create optional open application periods during which participating private schools would accept MPCP student applications. Under this policy, participating private schools would report by February 1 of each year which of the optional open application periods the school will accept student applications. The uniform optional dates for accepting applications and reporting of this information will assist parents in exercising their option of participating in this program.

- The proposed rule would better ensure that schools wishing to participate in the program are safe by stating that submission of temporary certificate of occupancy permits would not meet the safety requirements of this program.

#### **Statutory authority**

Section 227.11 (2) (a), Stats.

#### **Staff time required**

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed in creating the rule language, itself, will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than 6 months to complete.

## **Transportation**

### **Subject**

*Objective of the rule.* This rule making will amend Ch. Trans 139 by removing the prohibition on service fees (“doc” fees).

### **Policy analysis**

Currently, the rule prohibits motor vehicle dealers from charging a “processing” or “doc” (documentation) fee relating to a vehicle purchase for functions the dealer must perform prior to the vehicle’s delivery. The lone exception to this rule [s. Trans 139.05 (8) (b)] allows a dealer licensee who

has contracted with the Department, in accordance with the provisions of s. 341.21, Stats., to charge a purchaser a fee in the amount contained in the contract for the dealer’s services relating to the processing or distribution of an original or renewal registration or a certificate of title. This processing fee is the \$17.50 “Electronic Title/Plate Filing Fee” charged in conjunction with the APPS (Automated Partners in Processing) on-site registration program.

The proposed policy change will eliminate the prohibition on “doc” fees, and allow a dealer to charge a reasonable fee for functions the dealer must perform prior to the vehicle’s delivery, including: performing inspections, collecting and reporting fees and taxes, performing background checks on odometer history, filing registration and title on behalf of purchasers, and purchasing required forms. The proposed change would not impinge upon the dealer’s ability to charge an optional processing fee in conjunction with the APPS program. Motor vehicle dealers are subject to a number of statutes and regulations. A processing fee is not required by law. Any rule change, including allowing a dealer to charge a customer a “doc” fee, would need to be consistent with the applicable statutes and regulations. This may include revising other rules and placing conditions, including full disclosure of the fee, upon a dealer charging a customer “doc” fees.

The policy alternatives are to eliminate the prohibition of service (“doc”) fees, or to maintain the rule in its current form. Of the Wisconsin border states, Illinois, Michigan and Minnesota allow dealers to charge a “doc” fee, and Iowa law does not address “doc” fees. Allowing Wisconsin dealers to charge this fee will improve their competitive advantage. More importantly, it will allow dealers to more completely disclose the services for which consumers are charged in conjunction with the purchase of a motor vehicle.

### **Statutory authority**

Section 218.0152 (1), Stats., as created by 1999 Wis. Act 31, chs. 248 to 253.

### **Staff time required**

Approximately 100 hours, which represents the collective time expected to be spent by the Dealer Section and the Office of General Counsel.

## **Transportation**

### **Subject**

*Objective of the rule.* When reassigning ownership of a new motor vehicle which has not been previously titled or registered, ch. Trans 154 currently requires the dealer to complete an odometer disclosure on a “conforming” odometer disclosure statement. This rule making will amend ch. Trans 154 by replacing the existing requirement with the requirement that the odometer disclosure shall be recorded in the designated spaces provided on the manufacturer’s document of origin when disclosing mileage that is actual. When the odometer reading is not “actual,” a separate conforming document will be required. The odometer reading is not “actual” if that odometer reading differs from the vehicle’s mileage. An odometer reading can be not actual for a variety of reasons, including an odometer calibration error, mileage in excess of the designed mechanical odometer limit, accident, fire, fraud, etc. However, most of these reasons for a not actual reading are uncommon to new cars.

### **Policy analysis**

Currently, when reassigning ownership of a new motor vehicle which has not been previously titled or registered, dealers are required to complete the reassignment of ownership and odometer disclosure in the designated spaces on the manufacturer’s document of origin. Because the document of origin does not normally include a “conforming”

odometer disclosure statement, dealers are required to complete an additional disclosure on a separate "conforming" odometer disclosure statement which has been issued or approved by the department. Vehicle odometer disclosure requirements are based on the requirements promulgated by the federal odometer law. However, the federal odometer law does not require a "conforming" odometer disclosure statement when reassigning ownership of a motor vehicle which has not been previously titled or registered. 49 CFR s. 580.17 (b) states the following: "A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage."

The proposed policy change will amend the current rule by removing the "conforming" disclosure requirement, of ch. Trans 154.03 (2) (a) 1., on the document of origin, except in cases where an odometer change has occurred. The remaining provisions of s. Trans 154.03 would remain unchanged.

The policy alternatives are to begin accepting odometer disclosures in the designated spaces on the manufacturer's document of origin, without requiring that disclosure to meet the definition of "conforming"; or to maintain the existing odometer disclosure requirements. One problem with the current rule is that by requiring a disclosure that is more strict than the federal requirement, you reduce consistencies with other states. It is in the best interest of all parties to establish

a consistent and accurate mileage and ownership trail that is easy to use. The manufacturer's document of origin was specifically designed to facilitate ownership and odometer tracking in an effective and consistent manner. Adopting the policy of disclosing mileage on the manufacturer's document of origin, without requiring an additional "conforming" document, will increase interstate and intrastate consistency, will decrease redundancies created by recording the mileage on the manufacturer's document of origin and on a separate conforming document, will align the state law more closely with the federal law, and will promote goodwill and efficiency. Also, the disclosure on the manufacturer's document of origin is essentially conforming when disclosing actual mileage.

**Statutory authority**

Sections 85.16 (1), 218.0146 (1), 218.0152 (3), 227.11 (2) (a), 342.155 (1) (c), 342.156 (5), 342.157 and 342.16 (1) (c), Stats.

**Staff time required**

Approximately 200 hours, which represents the collective time expected to be spent by the Dealer Section policy analyst, the Dealer Section Field Investigation Unit Supervisor, and the Office of General Counsel.

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## Submittal of rules to legislative council clearinghouse

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*Please check the Bulletin of Proceedings for further information on a particular rule.*

### Commerce

#### Rule Submittal Date

On January 2, 2002, the Wisconsin Department of Commerce submitted a proposed rule affecting Chs. Comm 2, 34, 81, 82, 84 and 90 to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule relates to Wisconsin uniform plumbing code; fees; amusement rides; and design and construction of public swimming pools.

#### Agency Procedure for Promulgation

A public hearing is required and is scheduled for February 13, 2002.

#### Contact Information

Jean M. MacCubbin, (608) 266-0955.

### Financial Institutions–Savings Institutions

#### Rule Submittal Date

On January 14, 2002, the Wisconsin Department of Financial Institutions submitted a proposed rule creating ss. DFI-SB 16.03 (8) and DFI-SL 16.06, relating to acquiring and holding stock in bank-owned banks.

#### Analysis

The rule would be the implementing provision under state law authorizing state-chartered savings and loan associations to acquire stock in bank-owned banks. The rule would ensure that state-chartered savings and loan associations will not be at a competitive disadvantage with other financial institutions that have received similar authority under state or federal laws.

#### Agency Procedure for Promulgation

A public hearing is required and is scheduled for February 11, 2002.

#### Contact Information

Michael J. Mach  
Administrator, Division of Banking  
(608) 266-0451

### Transportation

#### Rule Submittal Date

On January 7, 2002, the Department of Transportation

submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule relates to motor carrier safety regulations.

#### Agency Procedure for Promulgation

A public hearing is not required.

#### Contact Information

Julie A. Johnson, Paralegal, (608) 266-8810.

### Transportation

#### Rule Submittal Date

On January 11, 2002, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule relates to issuance of driver's licenses and identification cards.

#### Agency Procedure for Promulgation

A public hearing is scheduled for February 15, 2002.

#### Contact Information

Julie A. Johnson, Paralegal, (608) 266-8810.

### Workforce Development

#### Rule Submittal Date

On January 15, 2002, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule relates to day care certification.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on February 15, 2002. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Workforce Solutions.

#### Contact Information

Elaine Pridgen  
(608) 267-9403  
email: pridgetel@dwd.state.wi.us

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## Rule-making notices

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### Notice of Hearing

#### Commerce [CR 02-002]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.63 (1) and (2), 101.73 (1) and 145.02 (2), Stats., the Department of Commerce will hold public hearings on revision to chs. Comm 2, 34, 81 to 87, and 90 relating to Wisconsin Uniform Plumbing Code; Fees; Amusement Rides; and Design and Construction of Public Swimming Pools.

#### Hearing Date, Time and Location

**Wednesday, February 13, 2002 @ 9:30 a.m.**

Tommy G Thompson Commerce Ctr.  
201 W. Washington Ave., Conf. Rm. 3C  
Madison, WI

#### Analysis of Proposed Rules

Statutory authority: ss. 101.145, 101.19 (1) (b); 101.60, 101.63 (1) and (2), 101.70, 101.73 (1), 145.02 (2), 145.26, and 167, Stats.

Statutes interpreted: ss. 145.02 (4), and 145.13, Stats.

Under s. 145.02, Stats., the Department of Commerce has the responsibility of safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing. One mechanism of the Department to fulfill this responsibility has been the promulgation of the state uniform plumbing code, chs. Comm 81 to 84.

This rule revision relates to various changes to chs. Comm 2, 34, 81, 82, 84 and 90 relating to the Wisconsin Uniform Plumbing Code; Fees; Amusement Rides; and Design and Construction of Public Swimming Pools.

A proposed revision to ch. Comm 2, Table 2.64-1 is to include the fees for submittals involving use of alternate standards, designs for nonpotable water treatment systems and stormwater infiltration systems. Revisions to s. Comm 2.68 relate to fees for construction inspections for public pools by the department or its agents. A new section, s. Comm 2.645, is proposed to establish a fee for the registration of cross connection control devices or assemblies no longer required to be submitted for plan review.

Proposed revisions to ch. Comm 34, amusement rides, encompass deleting the section on waterslides, s. Comm 34.50, and modifying that language into s. Comm 90.20 (4).

Revisions to ch. Comm 81 include a number of definitions relating to health-care plumbing and cross connection control, as well as alternate plumbing systems. The definitions relating to mobile homes and mobile home parks have been revised to reflect current state Statutes. Also included are the adoption of national standards specifically recognizing the use of plastic materials and adoption of the most current copies of standards previously adopted by Commerce. Section Comm 81.20 is repealed and recreated to reflect current practice with regard to primary and alternate standards.

Chapter Comm 82, the design, construction, installation, supervision and inspection of plumbing, is proposed for a number of additions or revisions. The scope of this chapter is being revised to acknowledge that plumbing systems shall be

maintained. Throughout ch. Comm 82, notes are proposed concerning plumbing setbacks to wells are as specified by the department of natural resources. Various minor revisions to ch. Comm 82 will correct current errors and recognize current plumbing practices.

- Section Comm 82.10, basic plumbing principles are proposed to be updated to reflect changing philosophies within the plumbing industry, including:

- Allowing recycling of wastewater in addition to the traditional holding, treatment and dispersal.

- Changing the reference to the “efficient” transport of wastewater that is proposed to replace the language to “quickly” transport wastewater. Many systems require lower velocities to reduce turbulence and also to promote sedimentation of solids.

- Adding to the basic plumbing principles the statutory mandate to protect the waters of the state.

- Changes to s. Comm 82.20 are proposed to eliminate plan review for cross connection control devices and assemblies, except for those installed in hospitals or health-care and related facilities [Table 82.20-1] and to establish the process for registration of these devices and assemblies [s. Comm 82.20 (13)].

- Section Comm 82.30 (11), insulation for building sewers, is being clarified and expanded to allow forming a box of polystyrene foam around the piping reflecting current practice.

- Section Comm 82.30 includes other revisions reflecting table format and standardizing terminology. In Table 82.30-1, the drainage fixture unit values (dfu) are expanded and revised to include additional fixtures. In addition, dfu values for health-care facilities are proposed to be incorporated in the table. Presently the number of water closets impact the load permitted on 3” diameter drain pipe; the proposed revision will eliminate this restriction. Sump and pump requirements are proposed to be revised to codify alternate approvals for homogenous units and expand requirements for exterior sumps. Another revision will require alarms to indicate failure of duplex units.

- Section Comm 82.20 (4) is being revised to eliminate the need for receipt of the water quality management (WQM) letter prior to plumbing plan approval. (Frequently project construction is started prior to receipt of this letter. In most cases the property has passed zoning approval and other building permitting requirements prior to the plumbing plan submittal.)

- Section Comm 82.31 includes amendments for clarifying various venting methods based on location of fixtures and dfu values of the fixture.

- Section Comm 82.32 includes a section to define requirements for campgrounds and exterior sanitary traps.

- Section Comm 82.33 is the subject of clarification for indirect waste piping as well as proper installation for residential dishwashers. Approved materials for these installations are included in ch. Comm 84. Revisions for receptors of indirect wastes will allow more options for acceptable receptors for wastewater from water treatment devices, furnaces, sterilizers and air conditioners. Requirements for the connection of dishwashing and clothes washing machines will be more consistent with national standards.

- Section Comm 82.34, revisions to the requirements for the installation of garage catch basins and interceptors are proposed; these revisions will clarify current policy statements and interpretations.

- Sections Comm 82.35 and 82.36 are being proposed for changes relating to the discharge and dispersal to drain systems.

- Section Comm 82.37, requirements for campground plumbing installations are included in the proposal. Currently no requirements are codified. This section would now include a separate section on water supply and drain systems for campgrounds.

- Section Comm 82.38 and Table 82.38-1 are being created to list the allowable discharge points for drinking fountains, iron filters, water softeners and floor drains.

- Section Comm 82.40 contains allowances for the use of water in a plumbing system that do not comply with drinking water standards as specified in s. Comm 82.70. Other additions proposed for this section are specific to piping serving water treatment devices. Table 82.40-2 includes the revisions to the water supply fixture units for health-care fixtures. Tables 82.40-10 and 82.40-11 are created to reflect loading for various pipe materials.

- Section Comm 82.50, health care and related facilities, is repealed and recreated in its entirety to reflect contemporary health-care practices and facilities, such as hospitals, clinics, and operatories, community-based residential facilities and other inpatient and nursing facilities. The section provides language for safeguarding the water supply as well as reducing scalding for the end user. Table 82.50-1 is being created to specify spouts and actions of various fixtures when used in health care facilities.

- Section Comm 82.51 regarding water supply, and drain and vent systems for mobile home parks is revised in total for better organization and clarification.

- Section Comm 82.60, Table 82.60 is revised to include new materials and the pipe supports.

- Section Comm 82.70 is being created to specify treatment standards for plumbing systems based on specific uses. These standards apply to wastewater treatment devices and drinking water treatment devices.

Chapter Comm 84, plumbing products, is proposed to be revised in part. Tables 84.30-8 and 84.30-9 include footnotes to clarify under what water conditions copper tubing shall not be installed. A new Table 84.30-11 has been created for the listing of piping standards for fixture supply connectors and indirect waste piping/tubing when used with point-of-use water treatment devices. Terminology has been updated in these tables to reflect use of the materials for POWTS.

Proposed changes to ch. Comm 90, design and construction of public swimming pools, relate to modifying terms for slides and water attractions [s. Comm 90.03] as well as creating or modifying sections which outline the process for construction inspection of public pools and water attractions. Minor changes throughout modify the term water recreation attraction to be consistent with state Statutes as water attractions.

The proposed rule revisions were developed with the assistance of the Plumbing Advisory Code Council. This Council consists of the following individuals: Thomas Boehnen, American Society of Plumbing; Rudy Petrowitsch, American Society of Sanitary Engineers; Gary Hamilton/Jack Ellinger, State AFL-CIO; Gary Kowalke, plumbing contractors; Mark Krowski, City of Milwaukee; Jeff Kuhn, Plumbing and Mechanical Contractors of SE Wisconsin; Clint McCullough, Madison Contractors

Association; Bob Netzler, League of Wisconsin Municipalities; Joe Zoulek, Wisconsin Association of Plumbing, Heating, Cooling Contractors, Inc.; Dave Viola, Plumbing Manufacturers Institute; Dale Schlieve, WI Society of Professional Designers of Engineering Systems, Inc.; and Gene Shumann, plumbing designers.

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until February 27, 2002, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **February 27, 2002**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

#### Written comments should be submitted to:

Jean M. MacCubbin, Department of Commerce  
Administrative Services Division  
P.O. Box 2689  
Madison, WI 53701-2689

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

#### Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Jean M. MacCubbin  
Division of Administrative Services  
Department of Commerce  
P.O. Box 2689  
Madison, Wisconsin 53701-2689  
Telephone (608) 266-0955  
or TTY (608) 264-8777

Written comments will be accepted until **February 27, 2002**.

#### Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Portions of this rule revision incorporate changes to plumbing designs and installations for various facilities or buildings, such as mobile home parks, campgrounds, health-care facilities, including CBRFs and nursing homes, and water treatment devices.

- The small CBRFs will have more options than are currently available to supply safe water to their patients.

- There will be time-savings for the property owner as the person installing may submit for review of the plans for private water mains.

- The proposed rules for the installation of water treatment devices will allow for the industry standard materials to be installed and may save money for the installer and customer.

- The rules for water treatment and the options for water reuse may open new markets for small businesses.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

The requirement for the submission of plans for water treatment systems designed to treat nonpotable water for additional use may increase plan submittals in the future.

3. Types of professional skills necessary for compliance with the rules.

All of the proposed rules require that professionals (master plumbers, journeymen, etc.) install the systems except for the installation of plumbing in a single family home, owned and occupied by the person installing the plumbing.

#### **Fiscal Estimate**

The department regulates pool construction. Pool construction plans must be submitted to Commerce for review and approval. Onsite inspections will be performed by Commerce to insure that the pools are constructed in accordance with the approved plans. Fees will be paid in accordance with s. 2.68 Table 2.68-1 at the time the plans are submitted for review which offset the cost to administer and enforce the code. The program will be administered with existing staff. The agency will absorb the cost within current resources. This proposal also revises the fee schedule to offset the rising inflation costs to administer the program

Based on an expected annual submittal rate of 150 pools, the estimated annual revenue from the proposed fee schedule is \$45,000.

#### **Copies of Rule and Contact Person**

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at: [www.commerce.state.wi.us/SB/SB-HomePage](http://www.commerce.state.wi.us/SB/SB-HomePage). Copies may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, Email [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

### **Notice of Hearing**

#### **Financial Institutions-Savings Institutions [CR 02-006]**

Pursuant to s. 227.17, Stats., notice is hereby given that the Department of Financial Institutions, Division of Savings Institutions will hold a public hearing at the time and place indicated below to consider creating rules relating to acquiring and holding stock in bank-owned banks.

#### **Date, Time and Place of Hearing**

**February 11, 2002** T.G. Thompson Conference Room  
Monday 5th Floor  
9:00 a.m. Department of Financial Institutions  
345 West Washington Avenue  
Madison, WI 53703

This facility is accessible to individuals with disabilities through levels A, B or the first floor lobby. If you require reasonable accommodation to access any meeting, please call

Lisa Bauer at (608) 264-7877 or TTY (608) 266-8818 for the hearing impaired at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided by the Americans with Disabilities Act.

Written comments in lieu of public hearing testimony must be received not later than the hearing date and should be addressed to Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876.

#### **Analysis Prepared by Department of Financial Institutions, Division of Banking**

To create ss. DFI-SB 16.03 (8) and DFI-SL 16.06. The rules would allow state-chartered savings banks and state-chartered savings and loan associations, with the prior approval of the division of savings institutions, to acquire and hold stock in any of the following: a bank chartered under s. 221.1202, Stats.; a national bank chartered under 12 USC 27(b)(1); a bank holding company wholly owning a bank chartered under s. 221.1202; or a bank holding company wholly owning a bank chartered under 12 USC 27(b)(1). Section 221.1201 permits state-chartered banks to acquire stock in bank-owned banks. The rules would be the implementing provision under state law authorizing state-chartered savings banks and state-chartered savings and loan associations to acquire and hold stock in bank-owned banks. The rules would ensure that state-chartered savings banks and state-chartered savings and loan associations will not be at a competitive disadvantage with other financial institutions that have received similar authority under state or federal laws.

#### **Statutory Authority**

Sections 214.03, 214.49 (15), 215.135, 215.13 (26) (f), 218.04 (7) (d) and 227.11 (2), Stats.

#### **Fiscal Estimate**

There is no state fiscal effect, and there are no local government costs. No funding sources or ch. 20 appropriations are affected. There are no long-range fiscal implications.

#### **Initial Regulatory Flexibility Analysis**

The proposed rule will not have an effect on small businesses.

#### **Contact Person**

A copy of the full text of the proposed rules and fiscal estimate may be obtained through the following:

Mark Schlei, Deputy General Counsel  
Department of Financial Institutions  
Office of the Secretary  
P.O. Box 8861  
Madison, WI 53708-8861  
Tel. (608) 267-1705  
TTY (608) 266-8818

A copy of the full text of the proposed rules may also be obtained at the department's website, [www.wdfi.org](http://www.wdfi.org).

### **Notice of Hearings**

#### **Natural Resources (Environmental Protection-General)**

#### **[CR 02-004]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2), 281.15 and 283.13, Stats., interpreting ss. 281.15 and 283.13, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 102, 104 and 106, Wis.

Adm. Code, relating to stream classifications. Chapter NR 102 contains water quality standards for Wisconsin surface waters. The major change made to ch. NR 102 includes relocation of standards and associated rule language from ch. NR 104 to ch. NR 102 since it is the more appropriate rule for language associated with specific designated use categories and water quality criteria necessary to support those uses for the surface waters of Wisconsin. A minor change has been to reserve Subchapter II for the thermal water quality standards currently being developed.

Chapter NR 104 contains the uses and designated standards for surface waters. The purpose of the revisions to this chapter is to update the lists of uses and designated standards to reflect current state of knowledge for those waters.

Chapter NR 106 contains procedures for the calculation of water quality-based effluent limitations for toxic and organoleptic (taste & odor) substances. Two additional subchapters have been added to this rule. Subchapter II has been reserved for the procedures for calculating water quality-based effluent limitations for the discharge of heat (i.e., temperature limitations) which are currently under development, and Subchapter III has been created to include effluent limitations for water designated as limited aquatic life waters in ch. NR 104 have been transferred from ch. NR 104 to ch. NR 106 which is a more logical location.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected: Any business that may wish to discharge effluent to a stream.
- b. Description of reporting and bookkeeping procedures required: Would be specified in a permit issued to the business depending on the type and amount of effluent discharged.
- c. Description of professional skills required: Dependent on the size and type of business discharging effluent.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

<b>February 20, 2002</b> Wednesday at 1:00 p.m.	Room 027, GEF #2, 101 South Webster Street Madison
<b>February 21, 2002</b> Thursday at 1:00 p.m.	Conference Room, DNR West Central Region Headquarters, 1300 W. Clairemont Avenue, Eau Claire
<b>March 4, 2002</b> Monday at 1:00 p.m.	Meeting Room Appleton Public Library 225 N. Oneida St. Appleton

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for

qualified individuals with disabilities upon request. Please call Laura Bub at (608) 261-4385 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Estimate**

There is no expected fiscal effect at the state or local level. The proposed amendments do not create additional regulatory workload beyond the requirements of the WPDES permit program.

Some stream classifications have become more restrictive and others less restrictive. This has resulted in cost expenditures at some facilities and cost savings at other facilities. It is important to stress that these revisions to chs. NR 102, 104, and 106 do not force any facilities to upgrade or make operational changes to meet limits that may be associated with an upgraded stream classification. These changes are to update ch. NR 104 with currently recognized and implemented stream classifications.

Written comments on the proposed rule may be submitted to Ms. Laura Bub, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707 no later than March 15, 2002. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WI-11-02] and fiscal estimate may be obtained from Ms. Bub.

### **Notice of Proposed Rule**

#### **Transportation [CR 02-003]**

NOTICE IS HEREBY GIVEN that pursuant to the authority of ss. 110.075 (6), 194.38 (2), 194.43, 346.45 (4), and 227.11, Stats., interpreting ss. 110.07, 110.075, 194.38 and 194.43, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 325 and 326, relating to motor carrier safety regulations, without public hearing unless, within 30 days after publication of this notice **February 1, 2002**, the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule may be addressed to Charles Teasdale, Division of State Patrol, Room 551, P. O. Box 7912, Madison, Wisconsin 53707-7912, telephone (608) 266-0305.

#### **Analysis Prepared by the Wisconsin Department of Transportation**

STATUTORY AUTHORITY: ss. 110.075 (6), 194.38 (2), 194.43 and 346.45 (4), Stats.

STATUTES INTERPRETED: ss. 110.07, 110.075, 194.38 and 194.43, Stats.

This rule making will amend two existing chapters to bring them into compliance with changes to the federal regulations which go into effect on June 1, 2002. These changes are as follows:

Chapter Trans 325 adopted motor carrier safety regulations of the United States Department of Transportation in effect on April 1, 2000. This amendment changes the date from April 1, 2000 to June 1, 2002. This change allows Wisconsin to enforce the most recent motor carrier safety regulations. All vehicles operating in interstate commerce are already subject, under federal law, to any changes that have been adopted between April 1, 2000 and June 1, 2002.

Chapter Trans 326 adopted motor carrier safety requirements for transportation of hazardous materials of the United States Department of Transportation in effect on April 1, 2000. This amendment changes the date from April 1, 2000 to June 1, 2002. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for transportation of hazardous materials. All vehicles operating in interstate and intrastate commerce are already subject under federal law to any changes that have been adopted between April 1, 2000 and June 1, 2002.

#### **Text of Proposed Rule**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.075 (6), 194.38 (2), 194.43 and 346.45 (4), Stats., the department of transportation hereby proposes to amend rules interpreting ss. 110.07, 110.075, 194.38 and 194.43, Stats., relating to motor carrier safety regulations.

SECTION 1. Trans 325.02 (intro.) and (8) are amended to read:

Trans 325.02 Federal rules adopted. The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~April 1, 2000~~ June 1, 2002, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these rules apply in the same manner as though the regulations were set out in full in this chapter:

(8) Every traffic officer and state patrol inspector employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the ~~2000~~ 2002 North American uniform out-of-service criteria.

SECTION 2. Trans 326.01 (intro.) and (8) are amended to read:

Trans 326.01 Federal rules adopted. The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~April 1, 2000~~ June 1, 2002, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these federal rules apply in the same manner as though the regulations were set out in full in this chapter:

(8) Every traffic officer and state patrol inspector employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the ~~2000~~ 2002 North American uniform out-of-service criteria.

#### **Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district, or any federally-recognized tribes or bands.

#### **Initial Regulatory Flexibility Analysis**

This proposed rule will have no adverse impact on small businesses.

#### **Copies of Rule and Contact Person**

Copies of this proposed rule can be obtained, without cost, by writing to Charles Teasdale, Division of State Patrol, 4802 Sheboygan Avenue, Room 551, P. O. Box 7912, Madison, WI 53707-7912, or by calling (608) 266-0305. Alternate formats of the proposed rule will be available to individuals upon request.

## **Notice of Hearing**

### **Transportation [CR 02-005]**

NOTICE IS HEREBY GIVEN that pursuant to s. 343.14 (2) (f), Stats., and interpreting s. 343.14 (2) (f), Stats., the Department of Transportation will hold a public hearing in **Room 115-B** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **15th** day of **February, 2002**, at **10:00 a.m.**, to consider the amendment of ch. Trans 102, Wis. Adm. Code, relating to the issuance of driver's licenses and identification cards.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business on February 15, 2002, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Phil Alioto, Department of Transportation, Division of Motor Vehicles, Room 255, Hill Farms State Transportation Building, Madison, WI 53707-7907.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

#### **Analysis Prepared by the Wisconsin Department of Transportation**

Statutory Authority: s. 343.14 (2) (f), Stats.

Statute Interpreted: s. 343.14 (2) (f), Stats.

This rule amends s. Trans 102.15 (3) (a) 8. to require additional proof of identification documents from persons using a "parolee" or "refugee" version of the federal I-94 arrival departure record. The "parolee" or "refugee" version of the federal I-94 document is a standard I-94 document that is hand-stamped to indicate the possessor's parolee or refugee status. The document is not secure identification and can be easily forged.

Under the current regulation, such an I-94 document is accorded the same veracity as proof of identity as a passport or certified birth certificate. Refugees and parolees often leave their countries without passports or other identification documents, making it difficult for them to document their identities to the satisfaction of driver licensing agencies. The Department proposes to require persons having these types of I-94 documents as their sole source of identification to also provide the Department with a letter from their immigration sponsor and a copy of their Reception and Placement Program Assurance Form, which bears a photograph of the person. Applicants who are unable to provide a copy of this form may be issued an ID or driver license, but only after the U.S. Immigration and Naturalization Service verifies their identity, which can take up to 60 days.

These rules are proposed in response to the September 11, 2001, terrorist hijackings in the United States, and are intended to help uncover any possible terrorist attempting to obtain identification documents through the Wisconsin Department of Transportation. The Department expects it will need to make significant revisions to existing s. Trans 102.15, which specifies what documents the Department will accept for identification purposes when issuing driver licenses or identification documents. This rule making is intended to immediately interrupt the possible use of forged federal I-94 documents as identification documents. The

Department has no evidence of past improper use of these documents by terrorists.

Officials have confirmed that 15 of the 19 suspected hijackers involved in the September 11, 2001, incidents obtained US visas in Saudi Arabia. Saudi officials have insisted that the men who obtained the visas likely engaged in identity theft, and that there is no way of knowing if they really were Saudi citizens. These men would not have entered the U.S. as “parolees” or “refugees” and this rule making would not have any effect on terrorists attempting to obtain Wisconsin identification documents with Saudi passports or other official entry documents.

On November 21, 2001, the New York Times reported that to support their terrorism, terrorists have committed crimes including skimming money from a charity for Muslim orphans in Albania and robbing an Italian diplomat’s home in Jordan. They acquired or forged seals from universities, border guards and the Saudi Arabian Interior Ministry. According to the Times, these extremists used the Muslim pilgrimages to Islamic holy sites in Saudi Arabia as a cover for recruiting new members or passing cash from one member to another. They moved money around the globe to bail members out of jail in Algeria or Canada, and to finance applications for political asylum and thus implant terrorist cells in Western Europe. This rule change could interrupt the mechanism for terrorists who have applied for or received asylum in the United States to obtain Wisconsin identification documents.

Accordingly, this rule is proposed as a mechanism to avoid issuing identification documents to any terrorist who has applied for asylum in the United States.

#### **Text of Proposed Rule**

Under the authority vested in the state of Wisconsin, department of transportation, by s. 343.14 (2) (f), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 343.14 (2) (f), Stats., relating to the issuance of driver’s licenses and identification cards.

**SECTION 1.** Section Trans 102.15 (3) (a) 8. is amended to read:

Trans 102.15 (3) (a) 8. A federal I-94 “parole edition” or “refugees version” arrival-departure record, together with a certification, on the department’s form, by the person, of the person’s name and date of birth, a copy of a U.S. department of state refugee data center reception and placement program assurance form and a letter from the person’s sponsoring agency on its letterhead, supporting the person’s application for a Wisconsin ID or driver license and confirming the person’s identification. Applicants who are unable to provide a reception and placement program assurance form may be issued a license, but only after their identification has been confirmed by the U.S. immigration and naturalization service;

#### **Fiscal Estimate**

The Department estimates there will be no direct fiscal estimate from this rule.

#### **Initial Regulatory Flexibility Analysis**

The provisions of this emergency rule have no effect on small businesses.

#### **Copies of Rule and Contact Person**

Copies of the rule may be obtained upon request, without cost, by writing to Phil Alioto, Division of Motor Vehicles, Hill Farms State Transportation Building, Room 255, Madison, WI 53707, or by calling (608) 266-0978. Hearing-impaired individuals may contact the Department

using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

### **Notice of Hearing Workforce Development (Economic Support, Chs. DWD 11 to 59) [CR 02-007]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.155 (1d) and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to day care certification.

#### **Hearing Date, Time and Location**

**February 15, 2002**    GEF 1 Building, Room B103  
Friday                    201 E. Washington Avenue  
1:30 p.m.                Madison, WI

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

#### **Analysis of Proposed Rules**

Statutory authority: ss. 49.155 (1d) (a), as amended by 2001 Wis. Act 16, and 227.11, Stats.

Statutes interpreted: ss. 49.155 and 48.651, Stats.

The proposed rules amend the certification requirements for child care providers who provide care and supervision of children whose care is subsidized under s. 49.155, Stats.

**Training on SIDS prevention.** The rules incorporate the requirement in 2001 Wisconsin Act 16 that all certified providers and their employees and volunteers receive training in the most current medically accepted methods of preventing sudden infant death syndrome if they will be providing care and supervision for children under one year of age. The provider, employee, or volunteer must receive this training before the provider is certified or the employment or volunteer work commences.

**Certification process.** The rules on the certification process are amended to require that the applicant’s references not be related to the applicant. The county or tribal certification agency shall check references prior to granting the initial certification and may check references at certification renewal. The results of the TB test that is required prior to certification may be from a test given up to one year before the application date. The county or tribal agency will conduct an on-site inspection of the place where child care will be provided before certification or within 30 days following certification, recertification, or a provider’s move to a new location. If the applicant is licensed or certified to care for children or adults separate from the proposed family day care, such as foster care or adult care, the county or tribal agency will request a statement for the appropriate regulating agency indicating that the regulating agency approves a child care business in the applicant’s home. The request shall include a request for permission for the licensed or certified caregiver to release information necessary for criminal

history record search for residents and clients in the applicant's home. The county or tribal certification agency shall provide information on child care and the certification system to applicants prior to initial certification. The information shall include materials on sudden infant death syndrome, child development, positive discipline, health and safety, and nutrition. The proposed rules also create a requirement that all new workers in a child care certification agency complete the department-approved training during the first 6 months of employment.

**Certification denial, suspension, revocation, or refusal to renew.** The proposed rules create additional reasons for which a county or tribal agency may deny, suspend, or revoke, or refuse to renew certification and discontinue payment, including the provider submits false attendance records to the child care subsidy administrative agency, the provider fails to cooperate with the certifying agency, the applicant's license or certificate to care for children or adults has been denied or revoked, the provider misrepresents or withholds information, or the provider denies the day care certification worker access to the premises to monitor compliance with the certification standards. The certifying agency shall require a provider to submit a new application for certification if the provider's previous certification was denied, revoked, or not renewed. The certifying agency may refuse to accept a new application for 2 years after the date of the denial, revocation, or refusal to renew the certification. A provider whose certification has been revoked twice for non-compliance with the certification standards shall be permanently barred from certification.

**Level I training.** The proposed rule specifies that the 15 hours of child care training that regular Level I certified providers receive shall include information on child growth and development, positive discipline, child abuse and neglect, interpersonal relationships, daily schedule, health and safety, sudden infant death syndrome, business practices, and nutrition.

**Provider's home.** The standards for the provider's home are amended to provide that firearms and ammunition shall be stored in separate, locked areas that are inaccessible to the children. Concrete and asphalt shall be prohibited under climbing equipment, swings, and slides. In-ground pools, on-ground pools with rigid sides, hot tubs, and large outdoor trampolines may not be used during hours of care and shall be inaccessible to children by use of a permanent barrier or other preventive measure. Wading pools may be used if the water is changed daily and the pool is disinfected daily. "Wading pool" is defined as a shallow pool, capable of being dumped to change water, and used primarily for small children. Pets that may pose any risk to the children shall be restricted from indoor and outdoor areas used for day care. The certifying agency may prohibit the use of a cellular phone as a primary phone. If a cellular phone is used as a primary phone, it shall be operational during the hours of child care. If the child care is provided in a rental property, the provider shall obtain permission from his or her landlord to operate a child care business. The requirement that water be tested for lead when a public water supply is not available is repealed because it has been found to be unnecessary and is not required of licensed child care providers.

**Child health care.** The standards on child health care are amended to require that the provider change a child's diaper on an easily cleanable surface that is cleaned with soap and water and a disinfectant solution after each use. The provider shall clean a child's superficial wound with soap and water only and protect it with a band-aid or bandage.

**Supervision.** The standards on supervision are amended to require that the provider's attendance records include the arrival and departure times for each child and that attendance records are stored at least 3 years.

**Provider interaction with children.** The standards on a provider's interaction with the children are amended to specify the following:

- Prohibited discipline that is frightening to a child includes binding or trying to restrict the child's movement or enclosing the child in a confined space such as a closet, basement, locked room, box, or similar cubicle.
- The provider shall provide positive guidance and redirection for the children and set clear limits for the children.
- The provider shall help each child develop self-control, self-esteem, and respect for the rights of others.
- The provider may not use time-out periods for a child under 3 years of age. A provider may use time-outs that do not exceed 5 minutes for a child who is 3 years old or older. A "time-out" is defined as an interruption of unacceptable behavior by the removal of the child from the situation.
- The provider may not punish a child for lapses in toilet training.
- The provider shall respond promptly to a crying infant or toddler's needs.
- The provider shall provide physical contact and attention to each infant and toddler throughout the day, including holding, rocking, talking to, singing to, and taking on walks inside and outside the home.
- The provider shall periodically change the position and location in the room of a non-walking child who is awake.

**Children's activities.** The standards on children's activities and equipment are amended to clarify that the requirement that each child engage in outdoor activities daily, weather permitting, includes infants and toddlers. The provider shall encourage each child to play with a variety of toys and equipment. Activities shall include opportunities for each child to be involved in a variety of activities during a week, including opportunities for play that enhance creativity, language development, use of large and small motor skills, and imagination. Activities shall also include reading to the children each day. There shall be opportunities for a non-walking child who can creep or crawl to move freely in a safe, clean, open, warm, and uncluttered area during each day.

**Transporting children.** The standards on transporting children are amended to require that a provider ensure that a written permission slip signed by a parent or guardian is on file and children are not left unattended in a vehicle.

**Rest.** The standards on rest are amended to require that each infant be placed to sleep on his or her back to reduce the risk of sudden infant death syndrome, unless otherwise directed by the child's physician. All sleeping arrangements for children under one year of age shall use firm mattresses and may not use soft bedding materials, such as comforters, pillows, fluffy blankets, or stuffed toys. A safe crib or playpen shall be available for each child under one year of age to use for napping.

**Provider-parent communication.** The standards on provider-parent communication are amended to require that the provider use information obtained on the department-provided "day care intake for child under 2 years" form, which collects essential information for infants and toddlers, to individualize the program of care for each child under 2 years of age. The provider shall inform a child's parent of any disciplinary action taken or any injury to the child that occurred during day care hours. The provider shall

also inform the parent in writing of the amount of insurance coverage on the premises.

**Monitoring compliance.** The provider shall permit a day care certification worker to conduct home inspections to monitor compliance with the certification standards.

**Initial Regulatory Flexibility Analysis**

The proposed rules affect certified child care providers. The proposed changes require no significant professional skills or reporting or bookkeeping procedures for compliance with the rule.

**Fiscal Impact**

The proposed rule changes affect county and tribal child care certification agencies but the changes have no significant fiscal effect.

**Contact Information**

The proposed rules are available on the DWD web site at

<http://www.dwd.state.wi.us/dwd/hearings.htm>.

A paper copy may be obtained at no charge by contacting:

Elaine Pridgen

Office of Legal Counsel

Dept. of Workforce Development

201 E. Washington Avenue

P.O. Box 7946

Madison, WI 53707-7946

(608) 267-9403

[pridgel@dwd.state.wi.us](mailto:pridgel@dwd.state.wi.us)

**Written Comments**

Written comments on the proposed rules received at the above address no later than February 15, 2002, will be given the same consideration as testimony presented at the hearing.

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## Submittal of proposed rules to the legislature

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*Please check the Bulletin of Proceedings for further information on a particular rule.*

**Accounting Examining Board**

(CR 01-133)

Ch. Accy 1, relating to auditing standards, standards for accounting and review services, and standards for attestation engagements.

**Commerce**

(CR 01-062)

Ch. Comm 32, relating to public employee safety and health.

**Commerce**

(CR 01-126)

Ch. Comm 95, relating to mobile home park permit fees.

**Natural Resources**

(CR 01-115)

Ch. NR 25, relating to commercial fishing in Lake Superior and Lake Michigan.

**Pharmacy Examining Board**

(CR 00-157)

Chs. Phar 2, 4, 12, 13, and 16, relating to consultation programs and licensure requirements.

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## Rule orders filed with the revisor of statutes bureau

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*The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rule orders.*

**Financial Institutions  
(CR 00-166)**

An order amending ch. DFI-Bkg 74, relating to procedures for the cancellation and return of certain collection agency accounts.

Effective 3-1-02

**Health and Family Services  
(CR 00-020)**

An order repealing ch. HSS 56 and creating ch. HFS 56, relating to foster home care for children.

Effective 3-1-02

**Health and Family Services  
(CR 00-172)**

An order affecting ch. HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards.

Effective 3-1-02

**Health and Family Services  
(CR 01-106)**

An order affecting ch. HFS 90, relating to early intervention services for children with developmental needs in the age group from birth to 3.

Effective 3-1-02

**Health and Family Services  
(CR 01-116)**

An order affecting ch. HFS 111, relating to licensing of emergency medical technicians-intermediate and approval of emergency medical technician-intermediate operational plans.

Effective 3-1-02

**Regulation and Licensing  
(CR 01-100)**

An order affecting chs. RL 80 to 86, relating to real estate appraisers.

Effective 3-1-02

**Regulation and Licensing  
(CR 01-102)**

An order affecting ch. RL 87, relating to the 2002 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

Effective 3-1-02

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## Rules published with this register and final regulatory flexibility analyses

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*The following administrative rule orders have been adopted and published in the **January 31, 2002**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

*For subscription information, contact Document Sales at (608) 266-3358.*

### Administration

#### (CR 01-048)

An order creating ch. Adm 46, relating to high-voltage transmission line fee.

Effective 2-1-02

#### Summary of Final Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

#### Summary of Comments of Legislative Standing Committees

None reported.

### Agriculture, Trade and Consumer Protection

#### (CR 01-004)

An order affecting ch. ATCP 48, relating to drainage district finances and grants to county drainage boards.

Effective 2-1-02

#### Summary of Final Regulatory Flexibility Analysis

The proposed revision of Chapter ATCP 48, Wis. Adm. Code, will have a positive impact on small businesses. The revision codifies a newly instituted cost-share grant program designed to assist drainage boards with producing specific work products, which will in turn improve their management of drainage districts. It establishes the process and timelines for drainage boards to apply and receive grant funds. These funds are specifically intended to reduce the financial burden on drainage district landowners, as it is the landowners who finance compliance with existing rule requirements. Items that may be cost-shared include the development of:

1. District Specifications (including detailed maps)
2. Benefits Reassessments
3. Compliance (maintenance) Plans

The rule revision also establishes County Treasurers as the official treasurers for all drainage board financial matters. A drainage board may appoint a deputy treasurer to assist the County Treasurer with management of drainage board fiscal matters, but it is the county treasurer who is responsible for retention of all grants-related documents.

Fiscal Impact. Small businesses in drainage districts will experience a positive fiscal impact from this rule revision as drainage boards are provided financial assistance to comply with existing rule provisions. This rule revision provides up to \$500,000 per year for six years in cost-share assistance. Prior to this revision, small businesses located within drainage districts would have borne the entire cost of complying with ch. ATCP 48 requirements.

Prior to this revision, a very small percentage of drainage boards took the initiative to produce drainage district specifications and compliance (maintenance) plans required by ch. ATCP 48. Most drainage boards considered the cost of complying with the rule to be too great a burden on district

landowners. It is anticipated that this cost-share assistance will greatly reduce that burden and, thereby, encourage greater compliance with the rule. It is estimated that this funding will allow about ten drainage boards to produce work products for a total of 40 districts each year. At this pace, it is anticipated that all districts may be assisted over the six-year life of the grants.

Recordkeeping. The proposed rule revision will not impose any new recordkeeping requirements on small businesses. A few new recordkeeping requirements are required of county treasurers and drainage boards members.

Professional Skills Required to Comply. Small businesses will not need to acquire any new skills — or retain additional professional services — to comply with the rule revisions.

#### Summary of Comments of Legislative Standing Committees

On July 18, 2001, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Labor and Agriculture and the Assembly Committee on Agriculture.

- The Senate committee took no action on this rule during the review period
- The Assembly committee took no action on this rule during the review period.

### Corrections

#### (CR 00-140)

An order affecting ch. DOC 302, relating to classification, assessment and evaluation, and program review.

Effective 2-1-02

#### Summary of Final Regulatory Flexibility Analysis

This rule does not impact small business.

#### Summary of Comments of Legislative Standing Committees

None reported.

### Health and Family Services

#### (CR 99-071)

An order affecting ch. HFS 58, relating to the eligibility of nonparent relatives of children to receive kinship care or long-term kinship care benefits to help them provide care and maintenance for the children.

#### Summary of Final Regulatory Flexibility Analysis

These rules apply to the following agencies and individuals: The Department of Health and Family Services, the Division of Hearings and Appeals in the Department of Administration, County Departments of Human/Social Services, Tribal Child Welfare Agencies and individuals who apply for a kinship care or long-term kinship care benefit.

None of the affected agencies or individuals are “small businesses” as defined in s. 227.114 (1) (a), Stats.

#### **Summary of Comments of Legislative Standing Committees**

The Department submitted the final proposed rulemaking order to the presiding officers on July 9, 2001. On September 5, 2001, the Senate Committee on Human Services and Aging held a hearing on final proposed rules. At the hearing, the Department submitted a germane modification to s. HFS 58.06 (2). On September 6, 2001, the Department received a letter from Senator Robson on behalf of the Senate Committee on Human Services and Aging requesting the Department to make two changes to the proposed rules. One of the requests pertained to making further changes to s. HFS 58.06 (2) presented by the Department at the September 5th hearing, while the other pertained to s. HFS 58.12. On September 6, 2001, the Department notified Senator Robson that it did not intend to amend the proposed rule in the manner requested by her Committee.

The Senate Committee on Human Services and Aging formally objected to the final proposed rule on September 14, 2001.

On November 14, 2001, the Joint Committee for the Review of Administrative Rules (JCRAR) held a hearing on the final proposed rule. By a 5–5 tie vote, JCRAR failed to concur in the standing committee’s objection. The Department received a letter dated November 15, 2001 that, given that JCRAR failed to sustain the Senate Committee’s objection, the Department was free to file the rule.

#### **Health and Family Services (CR 00–151)**

An order amending HFS 94, relating to the rights of patients to make telephone calls.  
Effective 2–1–02

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed permanent rule will not affect small businesses as “small business” is defined in s. 227.114 (1) (a), Stats.

#### **Summary of Comments of Legislative Standing Committees**

No comments were received.

#### **Health and Family Services (CR 01–045)**

An order creating ch. HFS 95, relating to the use of force to prevent escapes, pursue and capture escaped persons detained or committed and to provide security at facilities housing such persons.  
Effective 2–1–02

#### **Summary of Final Regulatory Flexibility Analysis**

The rule will not affect small businesses as “small business” is defined in s. 227.114 (1) (a), Stats.

#### **Summary of Comments of Legislative Standing Committees**

At the conclusion of the November 14, 2001 meeting of Assembly Committee on Corrections and the Courts, the committee informally asked the Department to consider changing “bodily injury” to “great bodily injury” in s. HFS 95.06 (1) (c), which addresses when lethal force may be used. Specifically, the language in question currently states that lethal force may be used only when the user reasonably

believes such force is necessary to prevent death or bodily injury. The Committee’s concern was that this language may unintentionally allow the use of lethal force in situations that are not serious enough to call for lethal force.

The Department believes a language change is unnecessary because the rule as currently drafted addresses the committee’s concern. Specifically, the language in question must be read in the context of the entire s. HFS 95.06 which describes the full use of force continuum. Of particular importance is s. HFS 95.06 (1) (a), which introduces the progression of force allowed as follows:

“The director shall adopt written policies and procedures that establish a systematic progression of force based on the perceived level of threat... This progression includes staff presence, dialogue, empty-hand control, incapacitating devices, and lethal force. The policies and procedures shall be designed to help ensure that force is only used when necessary and that only the amount of force that is necessary under the circumstances is used.” (Emphasis added.)

The limits this introductory language places on the paragraphs that address non-lethal force ensure that both non-lethal force and lethal force will be allowed only in circumstances and in a degree to which they are necessary, while also allowing facility staff to appropriately respond to threats of physical harm.

#### **Health and Family Services (CR 01–073)**

An order affecting ch. HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP).  
Effective 2–1–02

#### **Summary of Final Regulatory Flexibility Analysis**

The rule changes will not affect small businesses as “small business” is defined in s. 227.114 (1) (a), Stats. Although the program statutes and rules provide for assessment of insurers to help finance the Health Insurance Risk-Sharing Plan (HIRSP), no assessed insurer is a small business as defined in s. 227.114 (1) (a), Stats. Moreover, s. 149.143, Stats., prescribes how the amount of an insurer’s assessment to help finance HIRSP is to be determined.

#### **Summary of Comments of Legislative Standing Committees**

No comments were received.

#### **Higher Educational Aids Board (CR 01–078)**

An order creating ch. HEA 13, relating to the teacher education loan program.  
Effective 2–1–02

#### **Summary of Final Regulatory Flexibility Analysis**

Proposed rules relate to a specialized loan program and do not impact small business.

#### **Summary of Comments of Legislative Standing Committees**

No comments were received.

#### **Higher Educational Aids Board (CR 01–079)**

An order creating ch. HEA 14, relating to the teacher of the visually impaired loan program.  
Effective 2–1–02

**Summary of Final Regulatory Flexibility Analysis**

Proposed rules relate to a specialized loan program and do not impact small business.

**Summary of Comments of Legislative Standing Committees**

No comments were received.

**Insurance****(CR 01-072)**

An order affecting ch. Ins 6, relating to regulations concerning agent transactions with customers.

Effective 2-1-02

**Summary of Final Regulatory Flexibility Analysis**

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

**Summary of Comments of Legislative Standing Committees**

The legislative standing committees had no comments on this rule.

**Insurance****(CR 01-074)**

An order affecting chs. Ins 6, 26 and 28, relating to revising Wisconsin agent licensing rules to be reciprocal and more uniform under Gramm Leach Bliley Act and the NAIC Producer model.

Effective 2-1-02

**Summary of Final Regulatory Flexibility Analysis**

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

**Summary of Comments of Legislative Standing Committees**

The legislative standing committees had no comments on this rule.

**Natural Resources****(CR 00-154)**

An order affecting chs. NR 1, 10, 12 and 19, relating to deer hunting and the wildlife damage abatement and claims program.

Effective 2-1-02

**Summary of Final Regulatory Flexibility Analysis**

The rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses. Therefore, a final regulatory flexibility analysis is not required.

**Summary of Comments of Legislative Standing Committees**

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources. The Senate Committee on Environmental Resources held a public hearing on March 15, 2001. The Senate Committee requested the Department to remove the January deer bow season, extend the current September to November deer bow season by 2 days, remove the December deer gun season, and create a 2-day deer gun season on the Saturday and Sunday immediately after the regular deer gun season.

The Assembly Committee on Natural Resources held a public hearing on April 2, 2001 and requested modifications to the proposed rule.

At its May 23, 2001 meeting, the Natural Resources Board adopted modifications that concluded the late archery season on January 3, extended the early archery season by 4 days, included an experimental 4-day December antlerless gun season north of US highway 8 and clarified the state park herd control seasons.

On June 6, 2001, the Assembly Committee on Natural Resources requested further modifications. At its October 26, 2001 meeting, the Natural Resources Board modified the December experimental gun deer season to be in effect for 3 years, after which it would discontinue or sunset according to the rule. The Board declined to add 7 days to the end of the traditional 9-day deer gun season.

On November 7, 2001, the Assembly Committee on Natural Resources objected to 4 portions of Clearinghouse Rule No. 00-154 and referred those portions of the rule to the Joint Committee for Review of Administrative Rules. The Committee specifically objected to those parts of the rule that:

1. Created a 4-day December antlerless only deer hunting season for the 2002, 2003 and 2004 seasons.
2. Sets the day in October for the start of the 4-day antlerless only deer season, allowing the use of bows and guns, in a special deer herd control hunt.
3. Authorizes a 4-day early bow season immediately prior to the 9-day gun season.
4. Allows gun license deer to be registered only in the unit where the deer was killed or an adjoining unit.

The portions of the rule referred to the Joint Committee for Review of Administrative Rules have been removed from Natural Resources Board Order No. WM-40-00 until such time as the Joint Committee takes action on the objections.

**Natural Resources****(CR 00-164)**

An order affecting chs. NR 103 and 350, relating to wetland compensatory mitigation.

Effective 2-1-02

**Summary of Final Regulatory Flexibility Analysis**

The proposed rules do not directly regulate small business. Therefore, a final regulatory flexibility analysis is not required.

**Summary of Comments of Legislative Standing Committees**

The proposed rules were reviewed by the Assembly Committee on Environment and the Senate Committee on Environmental Resources. On August 14, 2001, the Assembly Committee on Environment held a public hearing and requested modifications to the proposed rule. On August 31, 2001, the Senate Committee on Environmental Resources requested modifications to the proposed rule.

Both committees suggested changes to the sequence for mitigation in s. NR 350.04, specifically looking at how the Department "grandfathers" existing banks that were developed prior to this proposed rule. The Natural Resources Board adopted the Senate's recommendation, though it appeared that it was not different in intent from the Assembly's version. The Senate also recommended eliminating the ratio variance language for those filling more than 20 acres of wetland. The Natural Resources Board did not propose to make that change.

On October 10, 2001, the Senate Committee on Environmental Resources formally objected to proposed s. NR 350.06 (3) on the grounds that it was arbitrary and

capricious. On October 11, 2001, the Assembly Committee on Environment objected to proposed s. NR 350.04 on the grounds that it was arbitrary and capricious.

On November 14, 2001, the Joint Committee for Review of Administrative Rules held a public hearing Clearinghouse Rule No. 00-164. Following the hearing, the Committee did not uphold the objection of the Assembly Committee on Environment. The Committee did uphold the objection of the Senate Committee on Environmental Resources.

The rule filed with the Revisor of Statutes for publication does not include proposed s. NR 350.06 (3).

**Natural Resources  
(CR 01-055)**

An order affecting ch. NR 410, relating to asbestos inspection fees.  
Effective 2-1-02

**Summary of Final Regulatory Flexibility Analysis**

The proposed rule revision will affect asbestos abatement contractors and their customers for large asbestos abatement projects, and will not have a significant effect on small business. The \$10 fee would increase the total cost of a project by less than one percent at a maximum.

**Summary of Comments of Legislative Standing Committees**

The rules were reviewed by the Assembly Committee on Environment and the Senate Committee on Environmental Resources. There were no comments.

**Regulation and Licensing  
(CR 01-068)**

An order affecting ch. RL 10, relating to certification of optometrists to use diagnostic pharmaceutical agents.  
Effective 2-1-02

**Summary of Final Regulatory Flexibility Analysis**

These rules will have no significant economic impact on

a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

**Summary of Comments of Legislative Standing Committees**

No comments were received.

**Revenue  
(CR 99-158)**

An order affecting ch. Tax 20, relating to the lottery and gaming property tax credit.  
Effective 2-1-02

**Summary of Final Regulatory Flexibility Analysis**

The rule does not have a significant economic impact on a substantial number of small businesses.

**Summary of Comments of Legislative Standing Committees**

No comments were received.

**Transportation  
(CR 01-097)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.  
Effective 2-1-02

**Summary of Final Regulatory Flexibility Analysis**

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

**Summary of Comments of Legislative Standing Committees**

No comments were received.

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## Sections affected by rule revisions and corrections

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The following administrative rule revisions and corrections have taken place in **January 2002**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### Revisions

#### Administration:

**Ch. Adm 46** (entire chapter)

#### Agriculture, Trade and Consumer Protection:

**Ch. ATCP 48**

S. ATCP 48.49 (entire section)  
S. ATCP 48.60 (entire section)

#### Corrections, Dept. of:

**Ch. DOC 302**

SS. DOC 302.01 to 302.205 (entire sections)

#### Health and Family Services:

**(Community Services, Chs. HFS 30—)**

**Ch. HFS 58** (entire chapter)

**Ch. HFS 94**

S. HFS 94.20 (3)

**Ch. HFS 95** (entire chapter)

**(Health, Chs. HFS 110—)**

**Ch. HFS 119**

S. HFS 119.07 (6) (b), (c) and (d)  
S. HFS 119.15 (2) and (3)

#### Higher Educational Aids Board:

**Chs. HEA 13 and 14** (entire chapters)

#### Insurance, Commissioner of:

**Ch. Ins 6**

S. Ins 6.50 (2)  
S. Ins 6.57 (1), (2), (5) and (6)  
S. Ins 6.58 (1), (2), (3) (a), (5) and (6)  
S. Ins 6.59 (4), (5) (a), (c), (d) and (e), (7) and (9)  
SS. Ins 6.595 and 6.60 (entire sections)  
S. Ins 6.61 (3) (e) and (16)  
S. Ins 6.63 (2) to (5)  
S. Ins 6.75 (2) (e), (n) and (o)

**Ch. Ins 26**

S. Ins 26.04 (1) and (2) (a) and (f)  
S. Ins 26.06 (3)

**Ch. Ins 28**

S. Ins 28.04 (1) (a) and (2) (a)  
S. Ins 28.06 (7) (c)  
S. Ins 28.07 (4)  
S. Ins 28.09 (entire section)

#### Natural Resources:

**(Fish, Game, etc., Chs. NR 1—)**

**Ch. NR 1**

S. NR 1.15 (2) (a), (am) and (at)

**Ch. NR 10**

S. NR 10.01 (3) (e), (em), (es), (ev), (ez) and (h)  
S. NR 10.09 (1) (a)  
S. NR 10.104 (10) (b)  
S. NR 10.105 (entire section)  
S. NR 10.106 (2) (a), (b) and (d)  
S. NR 10.117 (entire section)

**Ch. NR 12**

S. NR 12.16 (2) (a)

**Ch. NR 19**

S. NR 19.80 (4) (a)

**(Environmental Protection—General,  
Chs. NR 100—)**

**Ch. NR 103**

S. NR 103.03 (1) (g)  
S. NR 103.04 (4) and (11)  
S. NR 103.05 (3)  
S. NR 103.07 (1m), (4) and (5)  
S. NR 103.08 (1), (1k), (3) (b) and (g) and (4)

**(Environmental Protection—Water Regulation,  
Chs. NR 300—)**

**Ch. NR 350** (entire chapter)

**(Environmental Protection—Air Pollution Control,  
Chs. NR 400—)**

**Ch. NR 410**

S. NR 410.05 (3) (c)

#### Pharmacy Examining Board:

**Ch. Phar 2**

S. Phar 2.01 (1)  
S. Phar 2.04 (1)

**Regulation and Licensing:****Ch. RL 10**

S. RL 10.03 (entire section)  
S. RL 10.04 (2) (a), (b) and (c)

**Revenue:****Ch. Tax 20**

SS. Tax 20.01 to 20.09 (entire sections)  
S. Tax 20.11 (1), (2), (3), (3m), (4), (5) and (8m)  
S. Tax 20.12 (3)  
S. Tax 20.13 (entire section)  
S. Tax 20.14 (1) (a), (c) and (d), (2) (a), (b) and (c) and (3)

S. Tax 20.15 (1) (a), (b) and (e), (2), (3), (4) (a) and (c) and (5)  
S. Tax 20.16 (entire section)  
S. Tax 20.17 (1) (a), (2) and (4)  
S. Tax 20.18 (1) (e) and (2)  
S. Tax 20.19 (1) and (2) (intro.) and (b)

**Transportation:****Ch. Trans 276**

S. Trans 276.07 (16), (18), (19), (34m) and (34r)

**Editorial corrections**

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

**Agriculture, Trade and Consumer Protection:****Ch. ATCP 48**

S. ATCP 48.36 (1) (g) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Health and Family Services:****(Community Services, Chs. HFS 30—)****Ch. HFS 94**

S. HFS 94.02 (8) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**(Health, Chs. HFS 110—)****Ch. HFS 119**

S. HFS 119.12 (3) (d) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Insurance, Commissioner of:****Ch. Ins 6**

S. Ins 6.54 (3) (c) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
S. Ins 6.80 (2) (b) had corrections made under s. 13.93 (2m) (b) 7., Stats.  
S. Ins 6.85 (5) (d) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Natural Resources:****(Fish, Game, etc., Chs. NR 1—)****Ch. NR 10**

S. NR 10.40 (3) (f) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**(Environmental Protection—General, Chs. NR 100—)****Ch. NR 104**

S. NR 104.25 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**(Environmental Protection—Water Regulation, Chs. NR 300—)****Ch. NR 302**

S. NR 302.04 (4) (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 305**

S. NR 305.02 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 322**

S. NR 322.01 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
S. NR 322.08 (1) (d) and (g) and (6) had corrections made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 325**

S. NR 325.13 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 326**

S. NR 326.03 (6) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 327**

S. NR 327.01 (1) had corrections made under s. 13.93 (2m) (b) 7., Stats.  
S. NR 327.06 (18) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 333**

S. NR 333.03 (9) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 346**

S. NR 346.09 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 347**

S. NR 347.01 (1) had corrections made under s. 13.93 (2m) (b) 7., Stats.

- S. NR 347.04 (1) (b), (d), (e), (f) and (g) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 347.08 (4) (b) to (d) had corrections made under s. 13.93 (2m) (b) 7., Stats.

**Pharmacy Examining Board:**

**Ch. Phar 1**

- S. Phar 1.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. Phar 1.02 (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Revenue:**

**Ch. Tax 20**

- S. Tax 20.17 (1) (a) and (b), (4) and (5) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. Tax 20.18 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Errata**

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

**Agriculture, Trade and Consumer Protection:**

**Ch. ATCP 85**

- S. ATCP 85.06 (2) was reprinted to correct printing error.

**Financial Institutions—Securities:**

**Chs. DFI—Sec 1 and 2** were reprinted to correct pagination.

**Ch. DFI—Sec 4** was reprinted to correct history notes.

**Natural Resources:**

**(Fish, Game, etc., Chs. NR 1—)**

**Ch. NR 47**

- S. NR 47.12 (10) had a correction made to restore dropped copy.

**Transportation:**

**Ch. Trans 101**

- S. Trans 101.04 (6) was reprinted to correct printing error.

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## Sections affected by revisor's corrections not published

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**Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.**

**Subscriber's note:** Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
PSC 1.02, 5.05 (2), 108.01, 18.09 (3), 169.04 (2), 170.06 (2), 171.06 (2), 172.03 (5), 172.07 (1) and (2)	ch. 184	ch. 201
PSC 161.02, 161.07 (3), 161.08 (1) and (2)	16.974 (7)	16.974 (1)
PSC 186.11 (1)	196.482 (1)	101.937 (1)
PSC 186.11 (2)	196.482	101.937
PSC 186.11 (5)	196.482 (4), (5) and (6)	101.937 (3), (4) and (5)
PSC 185.17 (3)	182.0175 (1) (m)	182.0175 (1) (m) to 182.0175 (1m)

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## Executive orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 35.** Relating to a proclamation that the flags of the United States and State of Wisconsin be flown at half-staff as a mark of respect for the Honourable John W. Reynolds, United States District Judge and former Governor of Wisconsin.

**Executive Order 36.** Relating to a proclamation that the flags of the United States and State of Wisconsin be flown at half-staff as a mark of respect for the Honourable Henry S. Reuss.

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